United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7363

ORIGINAL

United States Court of Appeals

For the Second Circuit.

B

P/S

IN THE MATTER OF THE APPLICATION
OF
ANTCO SHIPPING COMPANY, LIMITED,
Petitioner-Appellant,
against
SIDERMAR S.P.A.,
Respondent-Appellee,

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration.

IN THE MATTER
OF
The Arbitration between SIDERMAR S.P.A.,
Cross-Petitioner-Appellee,
and
ANTCO SHIPPING COMPANY, LIMITED and NEW ENGLAND PETROLEUM CORPORATION,
Cross-Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

EATON, VANWINKLE & GREENSPOON
Attorneys for Antco Shipping Company, Limited and New England Petroleum Corporation, Appellants
600 Third Avenue
New York, N. Y. 10016
(212) 867-0606

BURLINGHAM, UNDERWOOD & LORD
Attorneys for Sidermar S.p.A., Appellee
25 Broadway
New York, N. Y. 10004
(212) 422-7585

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

(9606)

Index to Joint Appendix.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

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Cross-Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

Docket Entries.

Date	NR.	Proceedings
05-11-76	1.	Filed Petition for removal from Supreme Court State & County of N.Y.
05-12-76	2.	Filed Notice of filing of petition and Bond for removal.
05-11-76	3.	Filed Bond #2471677 in the sum of $500.00 National Surety Corp.
05-28-76	4.	Filed Respondent's cross-petition & notice of cross-motion to compel arbitration, ret. 6/4/76.
05-28-76	5.	Filed Respondent's memorandum of law in support of cross-petition to compel arbitration & in opposition to ANTCO's petition to stay arbitration.
05-26-76	6.	Filed Respondent's cross petition to compel arbitration.
05-28-76	7.	Filed Respondent's Answer to the petition. BU&L
05-28-76	8.	Filed Respondent's affidavit.
06-02-76	9.	Filed Petitioner's additional memorandum in support of Stay of Arbitration.
06-01-76	10.	Filed Petitioner's Answer to cross-petition of Sidermar, S.p.A. EVW&G
06-10-76	11.	Filed affidavit of Samuel N. Greenspoon dated 6-9-76.
06-28-76	12.	Filed Opinion #44670—Antco's petition to stay arbitration is denied; Sidermar's cross-petition to compel a consolidated arbitration with Antco & Nepco is granted—Haight, J. (mailed notice)

Docket Entries

06-28-76	13.	Filed Order that the petition of Antco for a stay of arbitration is denied and the cross-petition of Sidermar for a consolidated arbitration between itself, Antco & Nepco is granted and the action is transferred to the suspense docket--Haight, J. (mailed notice)
07-27-76	14.	Filed Petitioner's notice of appeal from the order entered on 6-28-76. (mailed notice)
07-29-76	15.	Filed Antco Shipping Co. Ltd. and New England Petroleum Corp. Notice of Filing of Undertaking for Costs on Appeal
07-28-76	16.	Filed Antco Shipping & New England Petroleum undertaking for costs on appeal in the sum of $250.00—National Surety Corporation.

Notice of Petition for Removal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER OF THE APPLICATION

of

ANTCO SHIPPING COMPANY, Limited,

Petitioner,

against

SIDERMAR S.p.A.,

Respondent,

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration.

Docket No. 76 Civ.

SIRS:

Please Take Notice that respondent Sidermar S.p.A., pursuant to 28 U.S.C. §§1441, 1446-49, 9 U.S.C. §205, and S.D.N.Y. Civil Rule 3, has this date filed in the United States District Court for the Southern District of New York its petition and bond for removal of the above-captioned case, now pending in the New York Supreme

Notice of Petition for Removal

Court, New York County, under docket number 8297/76, copies of which petition are attached hereto.

Dated: New York, New York
May 11, 1976

Yours, etc.,

BURLINGHAM UNDERWOOD & LORD
Attorneys for Sidermar S.p.A.
By JOHN F. O'CONNELL
A Member of the Firm
Office & P. O. Address:
25 Broadway
New York, N. Y. 10004

To:

Clerk of New York Supreme Court
New York County

Eaton, VanWinkle & Greenspoon
Attorneys for Antco Shipping Company Ltd.
600 Third Avenue
New York, N. Y. 10016

Petition for Removal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Respondent-cross-petitioner Sidermar S.p.A. ("Sidermar"), by its attorneys, Burlingham Underwood & Lord, and for its petition to remove this action from the Supreme Court of the State of New York, to this Court, alleges upon information and belief as follows:

1. This proceeding is within the jurisdiction of this Court under 9 U.S.C. §203, and is brought pursuant to 28 U.S.C. §§1441, 1446-49, 9 U.S.C. §205 and local Civil Rule 3 to remove to this Court a suit now pending in the New York Supreme Court, New York County.

2. Sidermar is the respondent in a special proceeding brought against it in the Supreme Court of the State of New York for New York County, entitled *Application of Antco Shipping Company, Ltd. v. Sidermar S.p.A.*, Index No. 8297/76. The said proceeding, in which Antco Shipping Company, Limited ("Antco") by petition seeks a stay of certain arbitration, was brought on by Order to Show Cause entered May 7, 1976 by Justice Irving H. Saypol. True copies of the said order and petition, and an affidavit in support thereof, are annexed hereto as Exhibit A, and they constitute all process, pleadings and orders served upon Sidermar in the said proceeding.

3. Antco, petitioner in the special proceeding and respondent here, is a Bahamian corporation, with an office at 825 Third Avenue, New York, New York.

4. Sidermar, petitioner here, is a corporation duly organized and existing under the laws of Italy, with an office in Genoa, Italy.

Petition for Removal

5. This special proceeding arises from a Contract of Affreightment (Part "B") dated February 13, 1973 between Sidermar, as owner, and Antco, as charterer, whereby Sidermar agreed to transport a specified annual quantity of petroleum products for Antco over a five-year period commencing April/July, 1974.

6. After accepting one of Sidermar's vessels for loading, Antco thereafter and up to the present time refused to accept for loading any further vessels, though duly nominated by Sidermar pursuant to the said Contract.

7. The Contract provides in pertinent part:

> "*Article 21*
>
> "The provisions of Part II of the Essovoy (1969) form of Charter attached hereto are incorporated in this Contract by reference and shall apply to each voyage. Wherever there shall be any conflict between the Contract and the Essovoy (1969) form, the contract shall govern.
>
> "*Article 22*
>
> "If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York."

8. Clause 24 of the Essovoy 1969 charter form provides in pertinent part:

> "24. Arbitration. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such ar-

bitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. * * *"

9. On April 19, 1976 Sidermar demanded arbitration under the Contract and appointed its arbitrator. (Exhibit 1 to Anteo's petition for stay).

10. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 21 U.S.T. 2517, T.I.A.S. 6997, 330 U.N.T.S. 3 (1970), has been ratified on behalf of both the United States and Italy.

11. The arbitration clause in this Contract of Affreightment is subject to that Convention.

12. The state court proceeding described in Exhibit A is removable to this Court as provided in 9 U.S.C. §205.

13. Sidermar has filed herewith a bond, with good and sufficient surety, in the penal sum of Five Hundred Dollars ($500) providing that it will pay all costs and disbursements incurred by reason of this removal proceeding should it be determined that this case is not removable or is improperly removed.

WHEREFORE, respondent-cross-petitioner Sidermar prays that this case proceed in this Court as an action properly removed hereto.

Dated: New York, New York
May 11, 1976

BURLINGHAM UNDERWOOD & LORD
Attorneys for Petitioners
By John F. O'Connell
25 Broadway
New York, N. Y. 10004
HAnover 2-7585

(Verified by John F. O'Connell, May 11, 1976.)

Exhibit A, Annexed to Petition—Order to Show Cause.

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse thereof, Pearl and Centre Streets, New York, New York on the 7th day of May, 1976

Present:

Hon. Irving H. Saypol Justice.

IN THE MATTER

of

The Application of ANTCO SHIPPING COMPANY, Ltd.,

Petitioner,

against

SIDERMAR S.p.A.,

Respondent.

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration

Index No. 8297/76

On the annexed petition of Antco Shipping Company, Ltd. verified May 6, 1976, the exhibits annexed thereto, and the affidavit of Samuel N. Greenspoon, sworn to May 6, 1976, it is

Ordered, that the respondent show cause before this Court at a Special Term, Part I thereof, to be held in and for the County of New York, in Room 130 of the County Courthouse, Pearl and Centre Streets, New York, New York, on May 13, 1976 at 9:30 A.M., or as soon

Exhibit A, Annexed to Petition—Order to Show Cause

thereafter as counsel can be heard, why a judgment should not be entered herein staying the proposed arbitration demanded by respondent under date of April 19, 1976, on the grounds that the contract pursuant to which such arbitration is demanded is illegal as violative of both federal and state law and public policy as more particularly set forth in the annexed petition; and it is further

Ordered, that pending the hearing of the petition herein the said arbitration be and the same hereby is stayed; and it is further

Ordered, that sufficient cause appearing therefor, let service of a copy of this order, the petition and exhibits annexed, and the said affidavit, on the attorneys for the respondent, Burlingham, Underwood & Lord, 25 Broadway, New York, New York, 10004, on or before 4:30 P.M. on May 7, 1976, be deemed good and sufficient notice and service hereof.

Enter

s/ I. H. S.
Justice of the Supreme Court

Exhibit A Continued (Petition).

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

IN THE MATTER

of

The Application of ANTCO SHIPPING COMPANY, Ltd.,

Petitioner,

against

SIDERMAR S.p.A.,

Respondent.

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration

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The Petition

Petitioner alleges:

1. Petitioner is a corporation organized and existing under the laws of the Commonwealth of the Bahamas and is engaged solely in the shipping business in foreign commerce.

2. On information and belief, the respondent is a corporation organized and existing under the laws of the Republic of Italy and is also engaged in the shipping business as an owner or charterer of ships.

3. Under date of April 19, 1976, respondent, through its attorneys, Burlingham, Underwood & Lord, served by registered mail upon petitioner a demand for arbitration (Copy annexed as Exhibit 1).

Exhibit A Continued (Petition)

4. The said demand for arbitration claimed that petitioner had breached an alleged "Contract of Affreightment (Part 'A' and Part 'B') dated February 13, 1973."

5. The said demand for arbitration stated that respondent has designated an arbitrator on its behalf, and that under the arbitration clause of the contract the petitioner must appoint its arbitrator within twenty days of service of the demand, to wit, by May 9, 1976; these two arbitrators are then to designate a third arbitrator.

6. Petitioner has not participated in any wise in the said arbitration and has not designated any arbitrator.

7. The said alleged contract (copy annexed as Exhibit 2) was negotiated by the brokers for the respective parties and executed by petitioner in New York, New York; and provides in Article 22 of Part A and Article 22 of Part B as follows:

> "If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in N York, N. Y."

8. The underlying purpose of the said alleged contract was that the ships would transport from the United States or other countries certain dry cargo to various ports in Europe or elsewhere for respondent's account or for the account of some firm or person other than petitioner; and that the ships would then be loaded for the return voyage for the account of petitioner or for the account of some firm or person designated by petitioner.

9. The said contract provides in Article 4 of Parts A and B in pertinent part, as follows:

> "Loading One (1) or two (2) safe port(s) Mediterranean Sea, *excluding Israel,* or in case of necessity, at Charterer's [petitioner's] option, (1) one or two (2) safe port(s) Nigeria". (Emphasis supplied and bracketed material interpolated).

Exhibit A Continued (Petition)

10. The said contract provision was drafted by or on behalf of respondent; the said contract is illegal under both federal and New York State law; it constitutes a boycott and blacklist of a nation, Israel, with whom the United States has friendly diplomatic relations in violation of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Secs. 2401 *et seq.* and the regulations promulgated thereunder; and is also violative of Chapter 662 of the Laws of New York, 1975, Secs. 296 *et seq.* of the Executive Law.

11. The said boycott of Israel furthers restrictive trade practices fostered or imposed by foreign countries against a country friendly to the United States and constitutes a boycott or blacklist of and a refusal to deal with persons because of their race or creed.

12. No previous application for the relief requested herein has been made to any Court or Justice thereof.

Wherefore, petitioner demands judgment against respondent staying arbitration under said alleged contract (Parts A and B dated February 13, 1973); and for such other and further relief as to the Court may seem just and proper.

ANTCO SHIPPING COMPANY, Ltd.
By s/ F. J. Wilson
Eaton, Van Winkle & Greenspoon
Attorneys for Petitioner
Office & P. O. Address
600 Third Avenue
New York, New York 10016
867-0606

(Verified by Frederick J. Wilson, May 6, 1976.)

Exhibit A—(Exhibit 1, Annexed to Petition).

BURLINGHAM UNDERWOOD & LORD

25 Broadway

New York, N. Y. 10004

April 19, 1976

Our File: 06-158-1

Mr. Edward M. Carey or any other
officer of
Anteo Shipping Company, Limited
825 Third Avenue
New York, New York 10022

Dear Sir:

We are attorneys for Sidermar S.p.A. ("Sidermar") which, as Owners, entered into a Contract of Affreightment (Part "A" and Part "B") dated February 13, 1973 with Anteo Shipping Company Limited ("Anteo") as Charterers.

Anteo has breached and totally repudiated the contract by failing and refusing to furnish the contracted-for tonnage and Anteo is liable to Sidermar for damages resulting from such breaches and repudiation in a sum estimated at approximately $14,000,000.

On behalf of Sidermar we demand arbitration of the disputes arising out of the contract as briefly described above and Sidermar has appointed as its arbitrator, Franklin G. Hunt, Esq., c/o Lord, Day & Lord, 25 Broadway, New York, New York.

Exhibit A—(Exhibit 1, Annexed to Petition)

We direct your attention to the fact that under the arbitration clause of the contract Antco must appoint its arbitrator within twenty days of service of this demand. Although the clause calls for the notice of such appointment to be served upon an officer of Sidermar, please be advised that Sidermar waives this requirement to the extent that the notice as well as such other notices as Antco may wish to serve upon Sidermar in connection with this matter should be directed to us, as attorneys for Sidermar.

Very truly yours,

BURLINGHAM UNDERWOOD & LORD
Attorneys for Sidermar S.p.A.
By Hervey C. Allen

HCA:ps

Exhibit A—Exhibit 1, Continued.

BURLINGHAM UNDERWOOD & LORD
25 Broadway, New York, N. Y. 10004

Return Receipt
Requested
Registered
No. 346651

(Postmark)
New York N. Y. Apr 1976 .35
New York N. Y. Apr 19 76 1.23

Regis
Return Receipt Requested

Mr. Edward M. Carey or any other
officer of
Antco Shipping Company, Limited
825 Third Avenue
New York, New York 10022

EXHIBIT A (EXHIBIT 2, ANNEXED TO PETITION).

ORIGINAL

CONTRACT OF AFFREIGHTMENT (Part "A")

FEBRUARY 13, 1973

It is hereby mutually agreed between Sidermar S.p.A. - Via XII Ottobre No.2 - Genoa, Owners with owned and/or controlled and/or chartered tonnage (hereafter called the "Owner"), and Antco Shipping Company Limited, Charterers (hereafter called the "Charterer"), that the transportation herein provided shall be performed on the following terms and conditions:

ARTICLE 1

Period This Contract of Affreightment shall be for a period of one (1) year.

Commencement August 1/October 31, 1973

ARTICLE 2

Cargo Sizes 60/80.000 tons 10% more or less at Owner's option.

Quantity 500.000 tons 10% more or less at Owner's option with liftings evenly spread.

It is understood and agreed that the intended vessel for the first lifting is the O/O Carrier "CIELO BIANCO" and she will be placed at Charterer's disposal as soon as Sidermar S.p.A. receive the vessel from original Owners.

ARTICLE 3

Cargo Crude Oil and/or Dirty Petroleum Products, maximum two (2) grades, according to vessel' natural segregation, maximum heat 135°Fahrenheit, maximum API not to exceed average of 46 API over this contract year.

ARTICLE 4

Loading One (1) or two (2) safe port(s) Mediterranean Sea, excluding Israel, or in case of necessity, at Charterer's option, (1) one or two (2) safe port(s) Nigeria.

If two load ports used, such ports to be in rotation East/West. However if a mandatory situation should arise Owner to agree to a rotation out of this order with a mutually agreed compensation so as to keep Owner whole.

ARTICLE 5

Discharging

One (1) or two (2) safe port(s) Bahamas or other Caribbean port(s) excluding Cuba, or at Charterer's option one (1) or two (2) safe port(s) United States Atlantic Coast.

ARTICLE 6

Freight Rate

A) The freight rate is to be charged by Owners to Charterer in accordance with Worldwide Tanker Nominal Freight Scale and any subsequent amendement thereto applicable throughout the duration of this contract, as follows according to the voyage performed:

2	Mediterranean ports	/	1	Caribbean port	WS 67
2	"	"	1	U S N H "	" 67
1	"	"	2	Caribbean "	" 67
1	"	"	2	U S N H "	" 67
2	"	"	2	Caribbean "	" 70
2	"	"	2	U S N H "	" 70
1	"	"	1	Caribbean "	" 62
1	"	"	1	U S N H "	" 62
1	Nigerian	"	1	Caribbean "	" 85.5
1	"	"	1	U S N H "	" 85.5
2	"	"	1	Caribbean "	" 85.5
2	"	"	1	U S N H "	" 85.5
1	"	"	2	Caribbean "	" 90
1	"	"	2	N H "	" 90
2	"	"	2	bean "	" 90
2	"	"	2	U S N H "	" 90

B) if two load ports and two discharge ports are used it is agreed that the port expenses of the second discharge port will be for account of Charterers.

C) Taking into account Charterers right to multiple load and/or discharge ports as per articles 4 and 5 and that type of vessels employed could be tankers or ore/oil or OBO, vessels to be maintained in safe and seaworthy conditions with proper cargo amounts on board in order allow vessel proceed with normal stability and trim conditions between any two ports of loading and/or discharging each time according to their type and characteristics.

ARTICLE 7

Freight payment

Freight under this Contract is to be paid in U.S. Currency directly to Owners care of BANCO DI ROMA - Main Office Genoa. Remaining understood that Owners have the possibility to change such payment instructions.

Parity

In case the official parity between Italian Lira and United States Dollar is such that Owner will get less than 575 Italian Liras per One United States Dollar, the Charterers will pay the freight increased up to the above parity (One United States Dollar - 575 Italian Liras).

In case the parity between Lira/Dollar will go under Dollars/ Liras 525 the parties will meet in order to find a mutual satisfactory solution.

ARTICLE 8

Laytime and Demurrage

The conditions of laytime for each voyage performed under this Contract shall be in accordance with WORLDSCALE terms in effect as of the date of this Contract and any subsequent amendments thereto.

Demurrage for each voyage performed under this Contract shall be $ 8,000.00 per day or pro rata thereof.

ARTICLE 9

Lifting Schedule and Nominations

A) Owners shall supply Charterers forty-five (45) days prior to each quarterly period, a tentative schedule of lifting dates and quantities for that period. It is understood that Owners intention is to perform this contract with combined carriers which will load dry cargoes for their own account as back-haul voyage to Mediterranean. The dry cargo trade could involve delays at loading and discharging ports as well as lack of cargoes and same would compel Owners to divert the ships to other loading ports. For all the above considerations Owners deem it would be very difficult to give Charterers exact scheduling. They can only undertake to keep Charterers continuously posted of vessel's position.

./.

B) Thirty (30) days prior to each vessel's expected lifting date. Owners shall confirm such date to the Charterers and establish a fifteen (15) day spread for that lifting. Furthermore Owners will establish a five (5) days spread for that lifting as soon as the vessel has started discharging of the dry cargo. This latter point will not apply in case the vessel will go under dry dock or repairs before the oil voyage.

C) Owners to have the right to make substitutions of similar size vessels within the loading spread as provided in Paragraphs A) and B) above. Any substitution outside these dates is to be made subject to the approval of the Charterers but such approval shall not be unreasonably withheld.

D) Within 5 (five) days from receiving the 15 (fifteen) day spread for loading Charterers shall declare port or ports of loading. Latest on signing B/L Charterers shall declare discharging port or ports and rotation.

ARTICLE 10

Class of Vessels

All Vessels to be furnished by Owner hereunder shall be constructed and maintained to the highest classification (American Bureau of Shipping or Lloyds or R.I.Na. or equivalent) of a vessel of its size and shall be seaworthy and in all respects fit for the carriage of the Crude Oil and/or Dirty Petroleum Products. These Vessels shall be properly manned, equipped and supplied for each voyage without responsibility or expense to the Charterer, except for equipment normally supplied by Charterer or Supplier or Receivers in loading or discharging operations.

ARTICLE 11

War Risk Insurance Premiums

Any increase in war risk insurance premiums on Vessel and/or Crew and/or Crew's War Bonus over and above those in effect as of the date of this contract. to be for Charterer's account. For this purpose, however, the Vessel's valuation for war risk insurance shall not exceed the valuation on the Vessel's ordinary marine policies.

21a

ARTICLE 12

Tovalop and Spillage

Owner warrants that the Vessel(s) is a participating tanker in TOVALOP and will so remain during the currency of this Charter provided however that if Owner acquires the right to withdraw from TOVALOP under Clause VIII thereof nothing herein shall prevent it from exercising that right provided Owners notifies Charterer forthwith of its intendion to withdraw, it being understood that such withdrawal being in favor of entering similar scheme such as CRYSTAL, etc.

ARTICLE 13

Bunkers

Owner agrees to purchase bunkers at Freeport, Bahamas if required and provided competitive from Charterer, with Charterer's right to deduct cost of same from the freight.

ARTICLE 14

Agents

It is understood and agreed Vessels to employ Owners Agents under this Contract except at Freeport, Bahamas wherein specifically Marine Brokers and Agents "MARBROK" are to be employed with, in this instance, Charterers having the right to deduct Marine Brokers and Agents agency fees at Freeport, Bahamas from freight.

ARTICLE 15

Air pollution

Owner agrees to comply at all times with all applicable laws, regulations and ordinance of any Federal/State/Regional or Local Government having jurisdiction regarding air pollution control.

ARTICLE 16

Pumping

Owner warrants that Vessels nominated to perform hereunder are capable of discharging within 24 hours or maintaining 90 PSI at ship's rail provided shore facilities are capable of receiving same.

ARTICLE 17

Arrival Notices

Master to advise Charterers under sailing instructions 72/48 and 24 hours of vessel's position prior to arrival at port of loading and discharging.

./.

22a

ARTICLE 18

FMCC

Owner warrants to have secured and carries aboard the Vessel a U.S. Federal Maritime Commission's Certificaye of Financial Responsibility as required under the U.S. Water Quality Improvement Act of 1970.
In no case shall Charterer be liable for demurrage as a result of Owner's failure to obtain the aforementioned certificate.

ARTICLE 19

Heating

Owner warrants that cargoes carried hereunder will be maintained at a minimum/maximum temperature of 130/135°Fah. if so required, at a sea temperature of 40°Fah., throughout the voyage and during discharge.

ARTICLE 20

Sublet or Assignment

Charterer may sublet or assign to any individual or company any Vessel nominated by Owner to perform for Charterer hereunder, but Charterer shall always remain responsible for the due fulfillment of this Contract and all its terms, conditions and should Charterer sublet or assign such Vessel under an agreement, the terms of which are inconsistent with the terms of this Contract, the Charterer shall indemnify and hold harmless Owner from any losses, damages or costs incurred by reason of such inconsistencies. It is further understood that such sublet/assignment shall always be to a First class Charterer and not to and Operator.

ARTICLE 21

Force Majeure

Neither the Vessel, nor Master or Owner, not the Charterer, shall unless otherwise in this Contract expressely provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from: - Act of God act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people: or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo: strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

./.

It is understood and agreed that both Owners and Charterers to extend any added cooperation as required in the event of impairments arising so as to endeavor to maintain the continuity of the fulfillment of this Contract of Affreightment.

ARTICLE 22

Charter Party Form The provisions of Part II of the Essovoy (1969) form of Charter attached hereto are incorporated in this Contract by reference and shall apply to each voyage. Wherever there shall be any conflict between the Contract and the Essovoy (1969) form, the Contract shall govern.

ARTICLE 23

Arbitration If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York.

ARTICLE 24

Vessels Owners to furnish Charterer with pertinent details of vessel's characteristics when nominating each particular lifting under Article 9.

ARTICLE 25

Freight Invoices Freight invoices are to be forwarded to:

Antco Shipping Company Limited
c/o Tank Ship Agency Inc.
201 East 50th Street
New York, New York 10022

IN WITNESS WHEREOF, this Contract of Affreightment has been executed in duplicate.

Witness the signature of:

For and on behalf of Owners as per written authority dated 22/10/73
NOLARMA s.p.c.
as Brokers only

SIDERMAR S.p.A.
Via XII Ottobre no.2
GENOA

Witness the signature of:

ANTCO SHIPPING COMPANY LIMITED

CONTRACT OF AFFREIGHTMENT (Part "B")

FEBRUARY 13, 1973

It is hereby mutually agreed between Sidermar S.p.A. - Via XII Ottobre No.2 - Genoa, Owners with owned and/or controlled and/or chartered tonnage (hereafter called the "Owner"), and Antco Shipping Company Limited, Charterers (hereafter called the "Charterer") that the transportation herein provided shall be performed on the following terms and conditions:

ARTICLE 1

Period This Contract of Affreightment shall be for a period of five (5) years.

Commencement April / July, 1974

ARTICLE 2

Cargo Sizes 140.000 tons 10% more or less at Owner's option on vessels limited to maximum draft sixty feet (60').

Quantity One million one hundred thousand (1,100.000) tons 10% more or less at Owner's option per annum, with liftings evenly spread.

ARTICLE 3

Cargo Crude Oil and/or Dirty Petroleum Products, maximum two (2) grades according to vessel' natural segregation, maximum heat 135° Fahrenheit, maximum API not to exceed average of 46 API over any contract year.

ARTICLE 4

Loading One (1) or two (2) safe port(s) Mediterranean Sea, excluding Israel, or in case of necessity, at Charterer's option, one (1) or two (2) safe port(s) Nigeria.
If two load ports used, such ports to be in rotation East/West. However if a mandatory situation should arise Owners to agree to a rotation out of this order with a mutually agreed compensation to apply so as to keep Owners whole.

ARTICLE 5

Discharging One (1) or two (2) safe port(s) Bahamas or other Caribbean port(s) excluding Cuba or at Charterer's option one (1) or two (2) safe port(s) United States Atlantic Coast.

ARTICLE 6

Freight Rate A) The freight rate is to be charged by Owners to Charterers in accordance with Worldwide Tanker Nominal Freight Scale and any subsequent amendement thereto applicable throughout the duration of this contract as follows according to the voyage performed:

2	Mediterranean	ports /	1 Caribbean	port	WS 60
2	"	"	1 U S N H	"	" 60
1	"	"	2 Caribbean	"	" 60
1	"	"	2 U S N H	"	" 60
2	"	"	2 Caribbean	"	" 63
2	"	"	2 U S N H	"	" 63
1	"	"	1 Caribbean	"	" 55
1	"	"	1 U S N H	"	" 55
1	Nigerian	"	1 Caribbean	"	" 76.5
1	"	"	1 U S N H	"	" 76.5
2	"	"	1 Caribbean	"	" 76.5
2	"	"	1 U S N H	"	" 76.5
1	"	"	2 Caribbean	"	" 81
1	"	"	2 U S N H	"	" 81
2	"	"	2 Caribbean	"	" 81
2	"	"	2 U S N H	"	" 81

B) If two load ports and two discharge ports are used it is agreed that the port expenses of the second discharge port will be for account of Charterers.

C) Taking into account Charterers right to multiple load and/or discharge ports as per articles 4 and 5 and that type of vessels employed could be tankers or ore/oil or OBO, vessels to be maintained in safe and seaworthy condition with proper cargo Amounts on board in order allow vessel proceed with normal

stability and trim conditions between any two ports of loading and/or discharging each time according to their type and characteristics.

ARTICLE 7

Freight Payment

Freight under this Contract is to be paid in U.S. Currency directly to Owners care of BANCO DI ROMA - Main Office - Genoa. Remaining understood that Owners have the possibility to change such payment instructions.

Parity

In case the official parity between Italian Lira and United States Dollar is such that Owner will get less than 575 Italian Liras per One United States Dollar, the Charterers will pay the freight increased upto the above parity (One United States Dollar - 575 Italian Liras).

In case the parity between Lira/Dollar will go under Dollars/ Liras 525 the parties will meet in order to find a mutual satisfactory solution.

ARTICLE 8

Laytime and demurrage

The conditions of laytime for each voyage performed under this Contract shall be in accordance with WORLDSCALE terms in effect as of the date of this Contract and any subsequent amendments thereto.

Demurrage for each voyage performed under this Contract shall be $ 13.000,00 per day or pro rata thereof.

ARTICLE 9

Lifting Schedule and Nominations

A) Owners shall supply Charterers forty-five (45) days prior to each quarterly period, a tentative schedule of lifting dates and quantities for that period. It is understood that Owners intention is to perform this contract with combined carriers which will load dry cargoes for their own account as back-haul voyage to Mediterranean. The dry cargo trade could involve delays at loading and discharging ports as well as lack of cargoes and same would compel Owners to divert the ships to other loading ports. For all the above considerations Owners

4)

deem it would be very difficult to give Charterers exact scheduling. They can only undertake to keep Charterers continuously posted of vessel's position.

B) Thirty (30) days prior to each vessel's expected lifting date, Owners shall confirm such date to the Charterers and establish a fifteen (15) days spread for that lifting. Furthermore Owners will establish a five (5) days spread for that lifting as soon as the vessel has started discharging of the dry cargo. This latter point will not apply in case the vessel will go under dry dock or repairs before the oil voyage.

C) Owners to have the right to make substitutions of similar size vessels within the loading spread as provided in Paragraphs A) and B) above. Any substitution outside these dates is to be made subject to the approval of the Charterers but such approval shall not be unreasonably withheld.

D) Within 5 (five) days from receiving the 15 (fifteen) day spread for loading Charterers shall declare port or ports of loading. Latest on signing B/L Charterers shall declare discharging port or ports and rotation.

ARTICLE 10

Class of Vessels

All vessels to be furnished by Owners hereunder shall be constructed and maintained to the highest classification (American Bureau of Shipping or Lloyds or R.I.NA. or equivalent) of a vessel of its size and shall be seaworthy and in all respects fit for the carriage of the Crude Oil and/or Dirty Petroleum Products. These Vessels shall be properly manned, equipped and supplied for each voyage without responsibility or expense to the Charterer, except for equipment normally supplied by Charterer or Supplier or Receivers in loading or discharging operations.

ARTICLE 11

War Risk Insurance Premiums

Any increase in war risk insurance premium on Vessel and/or Crew and on Crew's War Bonus over and above those in effect as of the date of this Contract, to be for Charterer's account.

For this purpose, however, the Vessel's valuation for war risk insu-

rance shall not exceed the valuation on the Vessel's ordinary ma rine policies.

ARTICLE 12

Tovalop and Spillage

The Owners warrant that the Vessel(s) is a participating tanker in TOVALOP and will so remain during the currency of this Charter provided however that if Owners acquires the right to withdraw from TOVALOP under CLAUSE VIII thereof nothing herein shall prevent it from exercising that right provided Owner notifies Charterer forthwith of its intention to withdraw, it being understood that such withdrawal being in favor of entering similar scheme such as CRYSTAL, etc.

ARTICLE 13

Bunkers

Owner agree to purchase bunkers at Freeport, Bahamas if required and provided competitive from Charterer, with Charterers' right to deduct cost of same from the freight.

ARTICLE 14

Agents

It is understood and agreed Vessels to employ Owners Agents under this Contract except at Freeport, Bahamas wherein specifically Marine Brokers and Agents "MARBROK" are to be employed with, in this instance, Charterers having the right to deduct Marine Brokers and Agents agency fees at Freeport, Bahamas from freight.

ARTICLE 15

Air Pollution

Owner agrees to comply at all times with all applicable laws, regulations and ordinances of any Federal/State/Regional or Local Government having jurisdiction regarding air pollution control.

ARTICLE 16

Pumping

Owner warrants that Vessels nominated to perform hereunder are capable of discharging within 24 hours or maintaining 150 PSI at ship's rail provided shore facilities are capable of receiving same.

ARTICLE 17

Arrival notices

Master to advise Charterers under [illegible] instructions 72, 48 and 24 hours of Vessel's position prior to arrival at port of loading and

discharging.

FMCC

Owner warrants to have secured and carries aboard the Vessel a U.S. Federal Maritime Commission's Certificate of Financial Responsibility as required under the U.S. Water Quality Improvement Act of 1970.

In no case shall Charterer be liable for demurrage as a result of Owner's failure to obtain the aforementioned certificate.

ARTICLE 18

Heating

Owner warrants that cargoes carried hereunder will be maintained at a minimum/maximum temperature of 130/135°Fah., if so required, at a sea temperature of 40°Fah., throughout the voyage and during discharge.

ARTICLE 19

Sublet of Assignment

Charterer may sublet or assign to any individual or company any Vessel nominated by Owner to perform for Charterer hereunder, but Charterer shall always remain responsible for the due fulfillment of this Contract and all its terms, conditions and should Charterer sublet or assign such Vessel under an agreement, the terms of which are inconsistent with the terms of this Contract, then Charterer shall indemnify and hold harmless Owner from any losses, damages or costs incurred by reason of such inconsistences. It is further understood that such sublet/assignment shall always be to a First class Charterer and not to an operator.

ARTICLE 20

Force majeure

Neither the Vessel, nor Master or Owners, nor the Charterer, shall, unless otherwise in this Contract expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from: - Act of God, act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; Strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general, or riot or civil commotion.

It is understood and agreed that both Owners and Charterers to extend any added cooperation as required in the event of impairments arising so as to endeavour to maintain the continuity of the fulfillment of this Contract of Affreightment.

ARTICLE 21

Charter Party Form The provisions of Part II of the Essovoy (1969) form of Charter attached hereto are incorporated in this Contract by reference and shall apply to each voyage. Wherever there shall be any conflict between the Contract and the Essovoy (1969) form, the contract shall govern.

ARTICLE 22

Arbitration If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York.

ARTICLE 23

Vessels Owner to furnish Charterer with pertinent details of Vessel's characteristics when nominating each particular lifting under Article 9.

ARTICLE 24

Freight invoices Freight invoices are to be forwarded to:

Antco Shipping Company Limited
c/o Tank Ship Agency Inc.
201 East 50th Street
New York, New York 10022

IN WITNESS WHEREOF, this Contract of Affreightment has been executed in duplicate.

Witness the signature of:

SIDERMAR S.p.A.
Via XII Ottobre no.2
GENOA

Witness the signature of:

ANTCO SHIPPING COMPANY LIMITED

Exhibit A Continued—(Affidavit of Samuel N. Greenspoon).

SUPREME COURT OF THE STATE OF NEW YORK,

COUNTY OF NEW YORK.

IN THE MATTER

of

The Application of ANTCO SHIPPING COMPANY, Ltd.,

Petitioner,

against

SIDERMAR S.p.A.,

Respondent.

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration

---

State of New York,
County of New York, ss:

SAMUEL N. GREENSPOON, being duly sworn, deposes and says:

I am a member of the firm of Eaton, Van Winkle & Greenspoon, attorneys for the petitioner herein and I am familiar with the facts set forth herein.

I submit this affidavit in support of the order to show cause.

The demand for arbitration dated April 19, 1976, was served by registered mail and the envelope postmarked April 19, 1976 (See Exhibit 1 to Petition). Under the arbitration clause the petitioner would have 20 days from date of service to designate its arbitrator, to wit, May 9, 1976. If three days are added because of mailing,

Exhibit A Continued—(Affidavit of Samuel N. Greenspoon)

that would make May 12, 1976 as the date for designation of its arbitrator by petitioner.

Petitioner has not designated an arbitrator nor participated in any way in the arbitration.

I respectfully request that the Court authorize service of the papers on respondent's attorneys. In their demand letter (Exhibit 1 to Petition) these attorneys stated:

> "We direct your attention to the fact that under the arbitration clause of the contract Antco must appoint its arbitrator within twenty days of service of this demand. Although the clause calls for the notice of such appointment to be served upon an officer of Sidermar, please be advised that Sidermar waives this requirement to the extent that the notice as well as such other notices as Antco may wish to serve upon Sidermar in connection with this matter should be directed to us, as attorneys for Sidermar."

In any event by serving the demand on behalf of the respondent and acting as attorneys for respondent in the arbitration proceeding it would appear that the Court is authorized to order service of the papers herein on respondent's attorneys. CPLR Secs. 303, 7503(b)(c).

The venue of this proceeding is properly in New York County since the arbitration is to take place in New York, New York and in any event under CPLR Sec. 7502(a) by reason of the circumstances herein this proceeding may be brought in the Supreme Court of any County.

It is common knowledge of which the Court can take judicial notice that the Arab countries have organized a boycott of Israel; and that such boycott is implemented in part by refusal to deal with companies and firms which do business with Israel; and also by boycotting United States and other firms which are owned or controlled, in whole or in part by persons of the Jewish faith. Firms

Exhibit A Continued—(Affidavit of Samuel N. Greenspoon)

dealing with Israel or owned or controlled in whole or in part by persons of the Jewish faith are subjected to Arab blacklists and otherwise discriminated against by Arab countries.

In order to avoid such blacklist many companies insert provisions in their contracts such as is contained in the contract at bar. And it was to prevent such boycott and blacklist that the legislation and regulations involved herein were enacted and promulgated.

All of the foregoing is a matter of common knowledge which has been the subject of Congressional inquiry as well as much comment in the press and otherwise.

The reason that this matter is brought on by order to show cause rather than by ordinary notice of petition is because of the short period of time in which the petitioner must designate its arbitrator and the necessity for a stay.

No previous application for the relief requested herein has been made to any Court or Justice thereof.

No application for an order compelling arbitration has been made by either party hereto. The petitioner has not in any way participated in the proposed arbitration or in the designation of any arbitrator.

I respectfully request that the order to show cause be signed and that the temporary stay requested therein be granted.

(Sworn to by Samuel N. Greenspoon, May 6, 1976.)

Answer to Petition.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Sidermar S.p.A. ("Sidermar") by its attorneys Burlingham Underwood & Lord, for its Answer to the Petition of Antco Shipping Company, Limited, respectively alleges upon information and belief as follows:

FIRST: It admits the allegations set forth in Paragraph 1 of the Petition.

SECOND: It admits the allegations contained in Paragraph 2 of the Petition.

THIRD: It admits that on April 19, 1976 Sidermar through its attorneys, Burlingham Underwood & Lord, served by registered mail upon Petitioner, a Demand for Arbitration, a copy of which is annexed to the Petition as Exh. 1, to the original of which, Sidermar refers for the terms and conditions thereof, and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 3, 4 and 5 of the Petition.

FOURTH: It admits that Petitioner has not designated any arbitrator and except as so expressly admitted, denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 6 of the Petition.

FIFTH: It admits that Exh. 2 annexed to the Petition is a copy of Parts A and B of the Contract of Affreightment dated February 13, 1973, the original of which Sidermar refers for the terms and conditions thereof, and except as so expressly admitted, denies knowledge or in-

formation sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 7, 8 and 9 of the Petition.

SIXTH: It denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Petition.

SEVENTH: It denies each and every allegation set forth in Paragraphs 10 and 11 of the Petition.

WHEREFORE, the Respondent, Cross-Petitioner, Sidermar S.p.A., demands that the Petition of Antco Shipping Company, Limited, be dismissed and that judgment be entered in its favor, together with the costs and disbursements of this action.

BURLINGHAM UNDERWOOD & LORD
By JOHN F. O'CONNELL
A Member of the Firm
25 Broadway
New York, New York 10004
HAnover 2-7585

(Verified by John F. O'Connell, May 25, 1976.)

Notice of Cross-Motion to Compel Arbitration.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

of

The Application of ANTCO SHIPPING COMPANY, LIMITED,

Petitioner,

against

SIDERMAR S.P.A.,

Respondent.

For an Order and Judgment pursuant to Article 75, CPLR staying a certain proposed arbitration.

IN THE MATTER

of

The Arbitration between SIDERMAR S.P.A.,

Cross-Petitioner,

and

ANTCO SHIPPING COMPANY, LIMITED and NEW ENGLAND PETROLEUM CORPORATION,

Cross-Respondents.

76 Civ. 2126 CSH

To:

Eaton, Van Winkle & Greenspoon, Attorneys for Antco Shipping Company, Ltd., 600 Third Avenue, New York, New York 10016.

Notice of Cross-Motion to Compel Arbitration

New England Petroleum Corporation, 825 Third Avenue, New York, New York 10022
and
c/o The Corporation Trust Company, 277 Park Avenue, New York, New York 10017.
The Clerk of the Court.

SIRS:

PLEASE TAKE NOTICE that upon the annexed cross-petition of Sidermar S.p.A. duly executed on the 25th day of May, 1976, the undersigned will move this Court at Room 2904 of the United States Court House, Foley Square, New York, New York, on the 4th day of June, 1976 at ten o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order pursuant to Title IX of the United States Code, Sections 4 and 206, directing cross-respondents to proceed with arbitration of disputes under a certain Contract of Affreightment between cross-petitioner and cross-respondent Antco Shipping Company, Ltd. dated February 13, 1973, and for such other, further and different relief as may be just and proper.

Dated: New York, New York
May 27, 1976

BURLINGHAM UNDERWOOD & LORD
Attorneys for Cross-Petitioner
Sidermar S.p.A.
By John F. O'Connell
A Member of the Firm
Office & P.O. Address
25 Broadway
New York, N.Y. 10004
422-7585

Cross-Petition to Compel Arbitration.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Sidermar S.p.A. ("Sidermar") by its attorneys Burlingham Underwood & Lord, respectfully shows upon information and belief as follows:

1. This cross-petition is based upon an agreement to arbitrate disputes under an international, commercial contract of ocean carriage. This cross-petition sets forth claims for relief within the jurisdiction of this Court under 9 U.S.C. §203 and within the admiralty and maritime jurisdiction of this Court under Rule 9(h) of the Federal Rules of Civil Procedure.

2. Sidermar is a corporation duly organized and existing under the laws of the Italian Republic, with an office and place of business at Via XII Ottobre 2, 16121 Genoa, Italy.

3. Anteo Shipping Company, Limited ("Anteo") is a Bahamian corporation, with an office at 825 Third Avenue, New York, New York 10022.

4. New England Petroleum Corporation ("Nepco") is a New York corporation with an office at 825 Third Avenue, New York, New York 10022.

5. By a Contract of Affreightment (Parts "A" and "B") dated February 13, 1973, a true copy of which is annexed hereto as Exhibit "A", Sidermar, as vessel owner, agreed to transport a specified annual quantity of petroleum products for Anteo, as charterer, from the Mediterranean or Nigeria to the Caribbean or the United States Atlantic coast, over a one-year period commencing August /October 1973 (Part "A") and a five-year period commencing April/July, 1974 (Part "B").

6. After accepting certain Sidermar vessels for loading up until June 1974, Antco thereafter and up to the present time has refused to accept for loading any further vessels, though duly nominated by Sidermar pursuant to the said Contract, causing Sidermar to sustain damage in the estimated amount of $14,000,000. Other unresolved disputes also exist under the Contract.

7. The Contract provides in pertinent part:

> "*Article 21*
>
> "The provisions of Part II of the Essovoy (1969) form of Charter attached hereto are incorporated in this Contract by reference and shall apply to each voyage. Wherever there shall be any conflict between the Contract and the Essovoy (1969) form, the contract shall govern.
>
> "*Article 22*
>
> "If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York."

8. Clause 24 of the Essovoy 1969 charter form provides in pertinent part:

> "24. Arbitration. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or

> points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. * * *"

9. By letter of April 19, 1976 to Antco (copy annexed hereto as Exhibit "B"), Sidermar demanded arbitration under the Contract and appointed its abritrator.

10. Antco, however, has failed to appoint its arbitrator despite Sidermar's demand that it do so. Instead of complying with said demand, Antco on May 7, 1976 commenced a special proceeding in New York Supreme Court, New York County, Index No. 8297 76, against Sidermar praying for a stay of the arbitration so demanded. Thereafter Sidermar by its petition of May 11, 1976 removed the said proceeding to this Court, Docket No. 76 Civ. 2126 CSH.

11. Nepco, by its letter of November 1, 1973 (true copy annexed hereto as Exhibit "C"), guaranteed "to fulfill and perform any and all legal obligations that Antco may be liable for as Charterers" under the said Contract. The duty to arbitrate disputes arising out of the Contract is one of the obligations so guaranteed to be performed by Nepco.

12. Sidermar, by its letter of April 19, 1976 to Nepco (copy annexed hereto as Exhibit "D") demanded that Nepco, as such guarantor, arbitrate the disputes arising out of the Contract and guarantee. Despite such demand, Nepco has failed to appoint its arbitrator although obligated to do so.

Exhibit A, Annexed to Cross-Petition

WHEREFORE, Sidermar moves the Court for an order under Title 9, United States Code, Sections 4 and 206, or either of those Sections, directing that Antco and Nepco nominate their abitrators and proceed to a consolidated arbitration in the manner provided for in the said Contract.

Dated: New York, New York
May 25, 1976

BURLINGHAM UNDERWOOD & LORD
Attorneys for Sidermar S.p.A.
By John F. O'Connell
A Member of the Firm
25 Broadway
New York, N.Y. 10004
HAnover 2-7585

(Verified by John F. O'Connell, May 25, 1976.)

Exhibit A, Annexed to Cross-Petition—Contract of Affreightment, February 13, 1973.

Same as Contract reproduced, *supra*, pages 17a to 30a.

EXHIBIT A TO CROSS-PETITION (CONTINUED). 42a

PART II

1. **WARRANTY VOYAGE CARGO.** The vessel, classed as specified in Part I hereof, and to be so maintained during the currency of this Charter, shall, with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with Clause 4 hereof, or so near thereunto as she may safely get (always afloat), and being seaworthy, and having all pipes, pumps and heater coils in good working order, and being in every respect fitted for the voyage, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control excepted, shall load (always afloat) from the factors of the Charterer a full and complete cargo of petroleum and/or its products in bulk, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects (sufficient space to be left in the tanks to provide for the expansion of the cargo), and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If heating of the cargo is requested by the Charterer, the Owner shall exercise due diligence to maintain the temperatures requested.

2. **FREIGHT.** Freight shall be at the rate stipulated in Part I and shall be computed on intake quantity (except deadfreight as per Clause 3) as shown on the Inspector's Certificate of Inspection. Payment of freight shall be made by Charterer without discount upon delivery of cargo at destination, less any disbursements or advances made to the Master or Owner's agents at ports of loading and/or discharge and cost of insurance thereon. No deduction of freight shall be made for water and/or sediment contained in the cargo. The services of the Petroleum Inspector shall be arranged and paid for by the Charterer who shall furnish the Owner with a copy of the Inspector's Certificate.

3. **DEADFREIGHT.** Should the Charterer fail to supply a full cargo, the Vessel may, at the Master's option, and shall, upon request of the Charterer, proceed on her voyage, provided that the tanks in which cargo is loaded are sufficiently filled to put her in seaworthy condition. In that event, however, deadfreight shall be paid at the rate specified in Part I hereof on the difference between the intake quantity and the quantity the Vessel would have carried if loaded to her minimum permissible freeboard for the voyage.

4. **NAMING LOADING AND DISCHARGE PORTS.**

(a) The Charterer shall name the loading port or ports at least twenty-four (24) hours prior to the Vessel's readiness to sail from the last previous port of discharge, or from bunkering port for the voyage, or upon signing this Charter if the Vessel has already sailed. However, Charterer shall have the option of ordering the Vessel to the following destinations for wireless orders:

	On a voyage to a port or ports in:
ST. KITTS	Carribbean or U.S. Gulf loading port(s)
PORT SAID	Eastern Mediterranean or Persian Gulf loading port(s) (from ports west of Port Said.)

(b) If lawful and consistent with Part I and with the Bills of Lading, the Charterer shall have the option of nominating a discharging port or ports by radio to the Master on or before the Vessel's arrival at or off the following places:

Place	*On a voyage to a port or ports in:*
LAND'S END	United Kingdom/Continent (Bordeaux/Hamburg range) or Scandinavia (including Denmark)
SUEZ	Mediterranean (from Persian Gulf)
GIBRALTER	Mediterranean (from Western Hemisphere).

(c) Any extra expense incurred in connection with any change in loading or discharging ports (so named) shall be paid for by the Charterer and any time thereby lost to the Vessel shall count as used laytime.

5. **LAYDAYS.** Laytime shall not commence before the date stipulated in Part I, except with the Charterer's sanction. Should the Vessel not be ready to load by 4:00 o'clock P.M. (local time) on the cancelling date stipulated in Part I, the Charterer shall have the option of cancelling this Charter by giving Owner notice of such cancellation within twenty-four (24) hours after such cancellation date; otherwise this Charter to remain in full force and effect.

6. **NOTICE OF READINESS.** Upon arrival at customary anchorage at each port of loading or discharge, the Master or his agent shall give the Charterer or his agent notice by letter, telegraph, wireless or telephone that the Vessel is ready to load or discharge cargo, berth or no berth, and laytime, as hereinafter provided, shall commence upon the expiration of six (6) hours after receipt of such notice, or upon the Vessel's arrival in berth (i.e., finished mooring when at a sealoading or discharging terminal and all fast when loading or discharging alongside a wharf), whichever first occurs. However, where delay is caused to Vessel getting into berth after giving notice of readiness for any reason over which Charterer has no control, such delay shall not count as used laytime.

7. **HOURS FOR LOADING AND DISCHARGING.** The number of running hours specified as laytime in Part I shall be permitted the Charterer as laytime for loading and discharging cargo; but any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to load or discharge cargo within the time allowed shall not count as used laytime. If regulations of the Owner or port authorities prohibit loading or discharging of the cargo at night, time so lost shall not count as used laytime; if the Charterer, shipper or consignee prohibits loading or discharging at night, time so lost shall count as used laytime. Time consumed by the vessel in moving from loading or discharge port anchorage to her loading or discharge berth, discharging ballast water or slops, will not count as used laytime.

8. **DEMURRAGE.** Charterer shall pay demurrage per running hour and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. If, however, demurrage shall be incurred at ports of loading and/or discharge by reason of fire, explosion, storm or by a strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo, the rate of demurrage shall be reduced one-half of the amount stated in Part I per running hour or pro rata for part of an hour for demurrage so incurred. The Charterer shall not be liable for any demurrage for delay caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots.

9. **SAFE BERTHING -SHIFTING.** The vessel shall load and discharge at any safe place or wharf, or alongside vessels or lighters reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage being at the expense, risk and peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime except as otherwise provided in Clause 15.

10. **PUMPING IN AND OUT.** The cargo shall be pumped into the Vessel at the expense, risk and peril of the Charterer, and shall be pumped out of the Vessel at the expense of the Vessel, but at the risk and peril of the Vessel only so far as the Vessel's permanent hose connections, where delivery of the cargo shall be taken by the Charterer or its consignee. If required by Charterer, Vessel after discharging is to clear shore pipe lines of cargo by pumping water through them and time consumed for this purpose shall apply against allowed laytime. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. However, should the Vessel be prevented from supplying such power by reason of regulations prohibiting fires on board, the Charterer or consignee shall supply, at its expense, all power necessary for discharging as well as loading, but the Owner shall pay for power supplied to the Vessel for other purposes. If cargo is loaded from lighters, the Vessel shall furnish steam at Charterer's expense for pumping cargo into the Vessel, if requested by the Charterer, providing the Vessel has facilities for generating steam and is permitted to have fires on board. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Vessel.

11. **HOSES MOORING AT SEA TERMINALS.** Hoses for loading and discharging shall be furnished by the Charterer and shall be connected and disconnected by the Charterer, or, at the option of the Owner, by the Owner at the Charterer's risk and expense. Laytime shall continue until the hoses have been disconnected. When Vessel loads or discharges at a sea terminal, the Vessel shall be properly equipped at Owner's expense for loading or discharging at such place, including suitable ground tackle, mooring lines and equipment for handling submarine hoses.

12. **DUES TAXES WHARFAGE.** The Charterer shall pay all taxes, dues and other charges on the cargo, including but not limited to Customs overtime on the cargo, Venezuelan Habilitation Tax, C.I.M. Taxes at Le Havre and Portuguese Imposto de Comercio Maritimo. The Charterer shall also pay all taxes on freight at loading or discharging ports and any unusual taxes, assessments, and governmental charges which are not presently in effect but which may be imposed in the future on the Vessel or freight. The Owner shall pay all dues and other charges on the Vessel (whether or not such dues or charges are assessed on the basis of quantity of cargo), including but not limited to French [illegible] and Spanish [illegible] taxes. The Vessel shall be free of charges for the use of

neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or Owner, shipper or consignee of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from: Act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

20. **ISSUANCE AND TERMS OF BILLS OF LADING**

(a) The Master shall, upon request, sign Bills of Lading in the form appearing below for all cargo shipped but without prejudice to the rights of the Owner and Charterer under the terms of this Charter. The Master shall not be required to sign Bills of Lading for any port which, the Vessel cannot enter, remain at and leave in safety and always afloat nor for any blockaded port.

(b) The carriage of cargo under this Charter Party and under all Bills of Lading issued for the cargo shall be subject to the statutory provisions and other terms set forth or specified in sub-paragraphs (i) through (vii) of this clause and such terms shall be incorporated verbatim or be deemed incorporated by the reference in any such Bill of Lading. In such sub-paragraphs and in any Act referred to therein, the word "carrier" shall include the Owner and the Chartered Owner of the Vessel.

(i) CLAUSE PARAMOUNT. This Bill of Lading shall have effect subject to the provisions of the Carriage of Goods by Sea Acts of the United States, approved April 16, 1936, except that if this Bill of Lading is issued at a place where any other Act, ordinance or legislation gives statutory effect to the International Convention for the Unification of Certain Rules relating to Bills of Lading at Brussels, August 1924, then this Bill of Lading shall have effect, subject to the provisions of such Act, ordinance or legislation. The applicable Act, ordinance or legislation (hereinafter called the "Act") shall be deemed to be incorporated herein and nothing herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the Act. If any term of this Bill of Lading be repugnant to the Act to any extent, such term shall be void to that extent but no further.

(ii) JASON CLAUSE. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract or otherwise, the cargo shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

(iii) GENERAL AVERAGE. General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by those rules, according to the laws and usages at the port of New York or at the port of London, whichever place is specified in Part I of this Charter. If a General Average statement is required, it shall be prepared at such port or place in the United States or United Kingdom, whichever country is specified in Part I of this Charter, as may be selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

(iv) BOTH TO BLAME. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact.

(v) LIMITATION OF LIABILITY. Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to the owner or chartered owner of vessels by any statute or rule of law for the time being in force.

(vi) WAR RISKS. (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or

(b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo thereat shall be paid by the Charterers or Cargo Owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses.

(c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority or by any person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bill of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contract of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bill of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

any wharf, dock, place or mooring facility arranged by the Charterer for the purpose of loading or discharging cargo, however, the Owner shall be responsible for charges for such berth when used solely for Vessel's purposes, such as awaiting Owner's orders, tank cleaning, repairs, etc. before, during or after loading or discharging.

13. (a). CARGOES EXCLUDED VAPOR PRESSURE. Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100°F.) in excess of thirteen and one half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D 323.

(b). FLASH POINT. Cargo having a flash point under one hundred and fifteen degrees Fahrenheit (115°F.) (closed cup) A.S.T.M. Method D 56 shall not be loaded from lighters but this clause shall not restrict the Charterer from loading or topping off crude oil from vessels or barges inside or outside the bar at any port or place where bar conditions exist.

14. (a). ICE. In case port of loading or discharge should be inaccessible owing to ice, the Vessel shall direct her course according to Master's judgment, notifying by telegraph or radio, if available, the Charterers, shipper or consignee, who is bound to telegraph or radio orders for another port, which is free from ice and where there are facilities for the loading or reception of the cargo in bulk. The whole of the time occupied from the time the Vessel is diverted by reason of the ice until her arrival at an ice free port of loading or discharge, as the case may be, shall be paid for by the Charterer at the demurrage rate stipulated in Part I.

(b) If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in or damaged, the Master shall communicate by telegraph or radio, if available, with the Charterer, shipper or consignee of the cargo, who shall telegraph or radio him in reply, giving orders to proceed to another port as per Clause 14 (a) where there is no danger of ice and where there are the necessary facilities for the loading or reception of the cargo in bulk, or to remain at the original port at their risk, and in either case Charterer to pay for the time that the Vessel may be delayed, at the demurrage rate stipulated in Part I.

15. TWO OR MORE PORTS COUNTING AS ONE. To the extent that the freight rate standard of reference specified in Part I F hereof provides for special groupings or combinations of ports or terminals, any two or more ports or terminals within each such grouping or combination shall count as one port for purposes of calculating freight and demurrage only, subject to the following conditions:

(a) Charterer shall pay freight at the highest rate payable under Part I F hereof for a voyage between the loading and discharge ports used by Charterer.

(b) All charges normally incurred by reason of using more than one berth shall be for Charterer's account as provided in Clause 9 hereof.

(c) Time consumed shifting between the ports or terminals within the particular grouping or combination shall not count as used laytime.

(d) Time consumed shifting between berths within one of the ports or terminals of the particular grouping or combination shall count as used laytime.

16. GENERAL CARGO. The Charterer shall not be permitted to ship any packaged goods or non-liquid bulk cargo of any description; the cargo the Vessel is to load under this Charter is to consist only of liquid bulk cargo as specified in Clause 1.

17. (a). QUARANTINE. Should the Charterer send the Vessel to any port or place where a quarantine exists, any delay thereby caused to the Vessel shall count as used laytime; but should the quarantine not be declared until the Vessel is on passage to such port, the Charterer shall not be liable for any resulting delay.

(b) FUMIGATION. If the Vessel, prior to or after entering upon this Charter, has docked or docks at any wharf which is not rat-free or stegomyia-free, she shall, before proceeding to a rat-free or stegomyia-free wharf, be fumigated by the Owner at his expense, except that if the Charterer ordered the Vessel to an infected wharf the Charterer shall bear the expense of fumigation.

18. CLEANING. The Owner shall clean the tanks, pipes and pumps of the Vessel to the satisfaction of the Charterer's Inspector. The Vessel shall not be responsible for any admixture if more than one quality of oil is shipped, nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.

19. GENERAL EXCEPTIONS CLAUSE. The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from: – any act,

[illegible] any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port or ports in or out of the regular course of the voyage. Any salvage shall be for the sole benefit of the Owner.

21. LIEN. The Owner shall have an absolute lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall [illegible] of the holders of any bills of lading [illegible]

22. AGENTS. The Owner shall [illegible] ports.

23. BREACH. Damages for breach [illegible] include all provable damages, and all costs of suit and attorney [illegible] hereunder.

24. ARBITRATION. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above-mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgement may be entered upon any award made hereunder in any Court having jurisdiction in the premises.

25. SUBLET. Charterer shall have the right to sublet the Vessel. However, Charterer shall always remain responsible for the fulfillment of this Charter in all its terms and conditions.

26. OIL POLLUTION CLAUSE. Owner agrees to participate in Charterer's program covering oil pollution avoidance. Such program prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterers to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record.

The Charterer agrees to pay freight as per the terms of the Charter Party on any consolidated tank washings, dirty ballast, etc., retained on board under Charterer's instructions during the loaded portion of the voyage up to a maximum of 1% of the total deadweight of the vessel that could be legally carried for such voyage. Any extra expenses incurred by the vessel at loading or discharging port in pumping ashore oil residues shall be for Charterer's account, and extra time, if any, consumed for this operation shall count as used laytime.

BILL OF LADING

Shipped in apparent good order and condition by ______________________________

on board the ______________________________ Steamship / Motorship ______________________________

whereof ______________________________ is Master, at the port of ______________________________

____

____

____

____

____

to be delivered at the port of ______________________________

or so near thereto as the Vessel can safely get, always afloat, unto ______________________________

____

or order on payment of freight at the rate of ______________________________

____

This shipment is carried under and pursuant to the terms of the contract / charter dated New York/London ______________________________

between ______________________________ and ______________________________, as

Charterer, and all the terms whatsoever of the said contract / charter except the rate and payment of freight specified therein apply to and govern the rights of the parties concerned in this shipment.

In witness whereof the Master has signed ______________________________ Bills of Lading

of this tenor and date, one of which being accomplished, the others will be void.

Dated at ______________________________ this ______________________________ day of ______________________________

Master

BEST COPY AVAILABLE

ORIGINAL

A G R E E M E N T

TO THE CONTRACT OF AFFREIGHTMENT (PARTS "A" AND "B") DATED FEBRUARY 13, 1973 BETWEEN MESSRS. SIDEMAR S.P.A. - GENOA - AS OWNERS - AND MESSRS. ANTCO SHIPPING COMPANY LIMITED - NEW YORK - AS CHARTERERS - AND ADDENDA ONE/TWO

It is this day mutually agreed as follows:

Owners shall pay a commission of 2% (two percent) on freight, deadfreight and demurrage to NOLARMA s.n.c. of Genoa for equal division with WEBTANK ASSOCIATES of New York.

All other terms, conditions and exceptions of the subject Contract of Affreightment remain unaltered.

February 25, 1974

(EXECUTED IN DUPLICATE)

Witness the signature of:
A. Taragoni

SIDEMAR S.p.A.
for and on behalf as per authority

NOLARMA s.n.c., as Brokers Only

Witness the signature of:
D. F. Barnard

WEBTANK ASSOCIATES

Exhibit B, Annexed to Cross-Petition.

April 19, 1976

Our File: 06-158-1

Mr. Edward M. Carey or any other
officer of
Anteo Shipping Company, Limited
825 Third Avenue
New York, New York 10022

Dear Sir:

We are attorneys for Sidermar S.p.A. ("Sidermar") which, as Owners, entered into a Contract of Affreightment (Part "A" and Part "B") dated February 13, 1973 with Anteo Shipping Company Limited ("Anteo") as Charterers.

Anteo has breached and totally repudiated the contract by failing and refusing to furnish the contracted-for tonnage and Anteo is liable to Sidermar for damages resulting from such breaches and repudiation in a sum estimated at approximately $14,000,000.

On behalf of Sidermar we demand arbitration of the disputes arising out of the contract as briefly described above and Sidermar has appointed as its arbitrator, Franklin G. Hunt, Esq., c/o Lord, Day & Lord, 25 Broadway, New York, New York.

We direct your attention to the fact that under the arbitration clause of the contract Anteo must appoint its arbitrator within twenty days of service of this demand. Although the clause calls for the notice of such appointment to be served upon an officer of Sidermar, please be advised that Sidermar waives this requirement to the extent that the notice as well as such other notices as Anteo may wish to serve upon Sidermar in connection with this matter should be directed to us, as attorneys for Sidermar.

Very truly yours,

BURLINGHAM UNDERWOOD & LORD
Attorneys for Sidermar S.p.A.

HCA:ps

Exhibit C, Annexed to Cross-Petition.

NEW ENGLAND PETROLEUM CORPORATION
825 Third Avenue
New York, N. Y. 10022
(212) 758-7300

P.R. Hunter, Senior Vice President

November 1, 1973

Dr. Crocco
Sidemar S.P.A.
c/o Charles R. Weber Associates, Inc.
630 Fifth Avenue
New York, N.Y. 10020

Dear Sir:

RE: Contract of Affreightment
(Part "A" and Part "B")
Dated February 13, 1973

In the event that Antco Shipping Company Ltd. ("Antco"), a Bahamian corporation, fails to perform its duties and obligations as Charterers, under the Contract of Affreightment (Part "A" and Part "B") dated February 13, 1973 between Sidemar S.P.A. as owners and Antco as Charterers, then New England Petroleum Corporation hereby guarantees to fulfill and perform any and all legal obligations that Antco may be liable for as Charterers under said Contract of Affreightment.

For: New England Petroleum Corporation

By: P. R. Hunter
Senior Vice President

Witness:

M. De Geronamo
AvK m

Exhibit D, Annexed to Cross-Petition.

Our File: 06-158-1

April 19, 1976

Mr. P. R. Hunter
New England Petroleum Corporation
825 Third Avenue
New York, New York 10022

Dear Sir:

We are attorneys for Sidermar S.p.A. ("Sidermar") which, as Owners, entered into a Contract of Affreightment (Part "A" and Part "B") dated February 13, 1973 with Antco Shipping Company Limited ("Antco") as Charterers. New England Petroleum Corporation ("Nepco") delivered its guarantee to Sidermar dated November 1, 1973 as per the attached copy thereof.

Antco has breached and totally repudiated the contract by failing and refusing to furnish the contracted-for tonnage and is liable to Sidermar for its damages resulting from such breaches and repudiation in a sum estimated at approximately $14,000,000. Nepco has similarly breached and totally repudiated the contract and the aforesaid guarantee and is liable to Sidermar for such damages.

On behalf of Sidermar we demand that Nepco arbitrate the disputes arising out of the contract and guarantee as briefly described above and Sidermar has appointed as its arbitrator, Franklin G. Hunt, Esq., c o Lord, Day & Lord, 25 Broadway, New York, New York.

We direct your attention to the fact that under the arbitration clause of the contract Nepco must appoint its

arbitrator within twenty days of service of this demand. Although the clause calls for the notice of such appointment to be served upon an officer of Sidermar, please be advised that Sidermar waives this requirement to the extent that the notice as well as such other notices as Nepco may wish to serve upon Sidermar in connection with this matter should be directed to us, as attorneys for Sidermar.

Very truly yours,

BURLINGHAM UNDERWOOD & LORD
Attorneys for Sidermar S.p.A.

HCA:ps

Answer to Cross-Petition.

UNITED STATES DISTRICT,

SOUTHERN DISTRICT OF NEW YORK.

First Defense

1. Cross respondents deny each and every allegation of the cross-petition except as expressly admitted or otherwise denied as follows:

Paragraph of Cross Petition	Specific Response
1	Admit except so much thereof as alleges that claims for relief are set forth within the Admiralty and Maritime jurisdiction of this Court under Rule 9(h) of Federal Rules of Civil Procedure.
2	Admit
3	Admit that Anteo Shipping Company, Limited ("Anteo") is a Bahamian corporation.
4	Admit
5	Admit
7, 8, 9 and 10	Admit
11	Admit the first sentence of this paragraph.
12	Admit

Answer to Cross-Petition

Second Defense

2. The contract of affreightment upon which the cross-petition relies violates the public policy of the United States and of the State of New York and is illegal, null and void. Under the Export Administration Act of 1969, as amended, 50 U.S.C. App. Secs. 2401 *et seq.* and the regulations promulgated thereunder, a boycott of Israel, a nation with whom the United States has friendly diplomatic relations, is null and void and violative of the public policy of the United States; the contract upon which the cross-petitioner relies is such boycott agreement.

Third Defense

3. The contract of affreightment upon which the cross-petition rerelies violates the public policy of the State of New York as set forth in Section 296(13) of the Executive Law which renders illegal and null and void any agreement of boycott or blacklist; the contract involved herein constitutes such boycott or blacklist and is hence illegal, null and void, and for the reasons set forth in the second defense as well as the reasons set forth in this defense, the said contract is subject to revocation at law and in equity and is thus not enforcible.

Fourth Defense

4. The purported guarantee of New England Petroleum Corporation ("Nepco") upon which the cross-petitioner relies, does not constitute an assumption by Nepco of the rights and obligations of Antco and hence there is no obligation on the part of Nepco to arbitrate.

Answer to Cross-Petition

Wherefore, petitioner Antco Shipping Company, Limited, demands judgment against Sidermar S.p.A. staying and enjoining the attempted arbitration and the cross-respondents Antco Shipping Company Limited and New England Petroleum Corporation demand judgment against Sidermar S.p.A. as cross-petitioner dismissing the cross-petition and staying arbitration, and for such other and further relief as to the Court may seem just and proper.

EATON, VAN WINKLE & GREENSPOON
Attorneys for Petitioner and Cross-Respondents
By Samuel N. Greenspoon
Office & P. O. Address
600 Third Avenue
New York, N. Y. 10016
867-0606

(Verified by Frederick J. Wilson, May 28, 1976, and by Herbert B. Greene, May 28, 1976.)

Affidavit of John F. O'Connell in Opposition to Petition and in Support of Cross-Petition.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN F. O'CONNELL, being duly sworn, deposes and says:

I am a member of the firm of Burlingham Underwood & Lord, attorneys for the Respondent-Cross-Petitioner Sidermar S.p.A. ("Sidermar") and am familiar with the pleadings and proceedings herein.

This affidavit is submitted in reply to certain allegations of Samuel N. Greenspoon, Esq., in his affidavit of May 6, 1976 submitted on behalf of Petitioner Anteo Shipping Company, Limited ("Anteo").

Anteo seeks to avoid breach-of-contract liability and agreed-upon arbitration by invoking a provision in Article 4 of the Contract of Affreightment which excluded Israel from the "safe" Mediterranean loading ports permitted in the Contract of Affreightment entered into by Anteo and Sidermar on February 13, 1973. Anteo asserts (without proof) that this provision—standing alone—constitutes a boycott and blacklist of Israel. (Petition, ¶10).

Sidermar has denied these allegations and filed a Cross-Petition to compel arbitration in accordance with Chapter 2 of Title 9 United States Code. Sidermar's Cross-Petition and memorandum of law in support thereof, detail the many reasons why Anteo's tactical reliance on Article 4 and the Federal and State statutes cited in Anteo's Petition has no merit.

Sidermar takes issue with certain remarks on page 3 of the Greenspoon affidavit and with paragraphs 10 and 11 of the Petition which ask the Court to take "judicial notice" that the Article 4 "excluding Israel" clause constituted an illegal boycott or blacklist of Israel.

Your deponent was not present when the Contract of Affreightment was negotiated and consequently does not

Affidavit of John F. O'Connell in Opposition to Petition and in Support of Cross-Petition

know the source or the reason for the language contained in Article 4. Mr. Greenspoon likewise was not present. But if the Court is taking judicial notice of anything, it should note that around the time that this contract was executed (February 13, 1973), events were occurring in the Middle East and throughout the world which may well have provided reasonable grounds for exclusion of Israel ports as unsafe for the loading of the vessels and cargo herein. Thus, on September 5, 1972, 8 Arab guerrillas invaded the Israeli dormitory at Munich, Germany resulting in 16 deaths and considerable property damage. On March 1, 1973 terrorists invaded a reception in Khartoum, Sudan and executed 2 United States envoys and a Belgian chargé d'affaires. On October 6, 1973, the 4th (and biggest) Arab-Israeli War in 25 years erupted. Fighting continued until October 24, 1973, when the United Nations caused a cease-fire to be effected.

In short, there may have been many valid reasons for either party proposing or agreeing to Article 4. Moreover, the clause had absolutely *no* effect on the performance of the Contract of Affreightment, or its nonperformance by Antco, because neither Antco nor Sidermar ever contemplated loading any portion of the contractual cargo (crude oil and or dirty petroleum products) in Israel, since Israel does not export (and never *has* exported) such cargo.

Finally, any issues concerning the effect of Article 4 on the Contract of Affreightment, and whether or not this inoperative provision has been seized upon by Antco as a tactical device to avoid contractual liability, are matters which, we submit, have been agreed to be resolved by arbitration, and which the Court should now order to be arbitrated.

WHEREFORE, the Petition of Antco to stay arbitration should be denied and the Cross-Petition to compel arbitration should be granted.

(Sworn to by John F. O'Connell, May 25, 1976.)

Affidavit of Samuel N. Greenspoon in Support of Petition and in Opposition to Cross-Petition.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

State of New York,
County of New York, ss:

SAMUEL N. GREENSPOON being duly sworn, deposes and says:

According to information supplied to me by the petitioner and cross-respondent, Anteo Shipping Company, Limited, the only voyage with respect to Part B is as follows:

About June 9, 1974 there was loaded aboard the vessel Marcus Lollighetti some 579,452 barrels of crude oil at Ras Lanuf Libya; about June 12, 1974 there was loaded upon the same vessel some 445,172 barrels of crude oil at Zuetina, Libya; the vessel so loaded sailed from Zuetina on or about June 12, 1974 and discharge of the cargo of approximately 1,024,624 barrels of crude oil commenced on or about June 27, 1974 at Freeport, Bahamas.

I have been further informed by my said client that so far as Part A is concerned, it was completely performed prior to cessation of performance under Part B.

(Sworn to by Samuel N. Greenspoon, June 9, 1976.)

Affidavit of John F. O'Connell in Opposition to Petition and in Support of Cross-Petition.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

State of New York,
County of New York, ss:

JOHN F. O'CONNELL, being duly sworn, deposes and says:

I am a member of the firm of Burlingham Underwood & Lord, attorneys for the Respondent-Cross-Petitioner, Sidermar S.p.A. and am familiar with the pleadings and proceedings heretofore had herein.

I have read the affidavit of Samuel N. Greenspoon, Esq., attorney for the Petitioner-Cross-Respondent Antco Shipping Company, Limited, sworn to on June 9, 1976.

Sidermar does not agree with the statement in the last paragraph of Mr. Greenspoon's affidavit that Part A of the Contract of Affreightment was completely performed prior to cessation of performance under Part B. Sidermar contends that there are matters in dispute under Part A of the Contract of Affreightment and that the Demand for Arbitration (Exhibit D, the Notice of Cross-Motion to Compel Arbitration) includes disputes under Part A and Part B of the Contract of Affreightment that are included in the $14,000,000 damages allege therein.

It is respectfully submitted that the disputes arising under Part A as well as Part B of the Contract of Affreightment must be arbitrated.

(Sworn to by John F. O'Connell, June 10, 1976.)

Opinion of Judge Charles S. Haight, Jr.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK

Appearances:

Eaton, Van Winkle & Greenspoon, 600 Third Avenue, New York, N. Y. 10016, Samuel N. Greenspoon, Esq., Attorneys for Petitioner and Cross-Respondent Anteo Shipping Company, Limited and Cross-Respondent New England Petroleum Corporation.

Burlingham, Underwood & Lord, 25 Broadway, New York, N. Y. 10004, John F. O'Connell, Esq., Attorneys for Respondent and Cross-Petitioner Sidermar S.p.A.

Memorandum

CHARLES S. HAIGHT, JR., D. J.:

Anteo Shipping Company, Limited ("Anteo") petitioned the New York State Supreme Court for a stay of arbitration proceedings demanded by Sidermar S.p.A. ("Sidermar"). Sidermar removed the proceeding to this Court and cross-petitioned for an order directing Anteo to proceed to arbitration. In its cross-petition, Sidermar also prays that New England Petroleum Corporation ("Nepco"), as alleged guarantor of Anteo's pertinent contractual obligations, be directed to arbitrate with Sidermar. Sidermar's cross-petition is predicated upon the United States Arbitration Act, 9 U.S.C. §§ 1, 4 and 206.

The Court denies Anteo's petition for a stay of arbitration, and grants Sidermar's cross-petition for an order directing a consolidated arbitration between Sidermar, Anteo and Nepco.

The Contract

The case arises out of a contract of affreightment dated as of February 13, 1973 between Sidermar, as owner of unnamed vessels, and Anteo as charterer. Part "A" of the contract covered a period of one year, commencing August 1/October 31, 1973, and called for the ocean carriage of 500,000 tons of crude oil. Part "B" was for a period of five years, commencing April/July 1974, and called for the ocean carriage of 1,100,000 tons of crude oil per year.[1]

Parts "A" and "B" of the contract both provide, in respect of loading and discharging ports, as follows:

"ARTICLE 4

"Loading

One (1) or two (2) safe port(s) Mediterranean Sea, *excluding Israel*, or in case of necessity, at Charterer's option, (1) one or two (2) safe port(s) Nigeria.

If two load ports used, such ports to be in rotation East/West. However if a mandatory situation should arise Owner to agree to a rotation out of this order with a mutually agreed compensation so as to keep Owner whole.

"ARTICLE 5

"Discharging

One (1) or two (2) safe port(s) Bahamas or other Caribbean port(s) excluding Cuba, or at charterer's option one (1) or two (2) safe port(s) United States Atlantic Coast." (emphasis added).

Each part also provided, in Article 9, as follows:

> "Owners shall supply Charterers forty-five (45) days prior to each quarterly period, a tentative schedule of lifting dates and quantities for that period. *It is understood that Owners intention is to perform this contract with combined carriers which will load dry cargoes for their own account as back-haul voyage to Mediterranean.* The dry cargo trade could involve delays at loading and discharging ports as well as lack of cargoes and same would compel Owners to divert the ships to other loading ports. For all the above considerations Owners deem it would be very difficult to give Charterers exact scheduling. They can only undertake to keep Charterers continuously posted of vessel's position." (emphasis added).

The voyages called for by Part "A" of the contract were performed.[2] One lifting of cargo took place under Part "B", the M/T Marcus Lollighetti loading 1,024,624 barrels of fuel oil at Libyan ports in June, 1974 for carriage to Freeport, Bahamas. Anteo then totally ceased performance of the contract.[3]

Sidermar, claiming a breach of contract by Anteo, demanded arbitration with Anteo and Nepco as the latter's guarantor. The contract provides for arbitration. Parts "A" and "B" both provide, in Article 22:

> "The provisions of Part II of the Essovoy (1969) form of Charter attached hereto are incorporated in this Contract by reference and shall apply to each voyage. Wherever there shall be any conflict between the Contract and the Essovoy (1969) form, the Contract shall govern."

Article 23 provides:

> "If arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York."

Clause 24 of the printed Essovoy (1969) form, attached to the contract, provides in pertinent part:

> "Arbitration. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of New York or in the City of London whichever place is specified in Part I of this charter pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the disputes or differences which such party desires to put to arbitration." • • •

By separate letters dated April 19, 1976, Sidermar named Franklin G. Hunt, Esq., as its arbitrator, and demanded that both Anteo and Nepco, its corporate parent, arbitrate Sidermar's claim for approximately $14,000,000 arising out of Anteo's breach and repudiation of the contract. The claim against Nepco is founded upon a written guarantee

given by Nepco under date of November 1, 1973, which is addressed to Sidermar and reads:

> "In the event that Antco Shipping Company Ltd. ('ANTCO'), a Bahamian corporation, fails to perform its duties and obligations as Charterers, under the Contract of Affreightment (Part 'A' and Part 'B') dated February 13, 1973 between Sidermar S.P.A. as owners and Antco as Charterers, then New England Petroleum Corporation hereby guarantees to fulfill and perform any and all legal obligations that Antco may be liable for as Charterers under said Contract of Affreightment."

Antco's Petition for a Stay of Arbitration

Antco contends that the entire contract of affreightment, including the arbitration clause, is illegal and unenforceable because it contravenes the public policy of the United States and the State of New York. Consequently, the argument runs, either party could with impunity cease performance of this illegal contract at any time it chose, leaving the other party with no remedy that the law will enforce.

Sidermar denies any illegality, and appeals to that public policy of the United States which encourages and enforces international arbitration agreements.

Antco's charge of illegality is based upon the provision in Article 4 of the contract "excluding Israel" from Mediterranean loading ports. Antco characterizes that provision as a boycott or blacklist of Israel, a nation friendly to the United States.

An expression of public policy condemning this boycott is said to be found in the Export Regulation Act of 1969, 50 U.S.C. App. §§ 2401-2413. That statute took effect upon the expiration of the Export Control Act of 1969, 50 U.S.C. App. §§ 2021-2032.

Section 3 of the 1969 Act, 50 U.S.C. App. §2402, sets forth the "Congressional declaration of policy" underlying the statute. Antco places particular reliance upon §2402(5), which reads in part:

> "It is the policy of the United States (A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States, . . ."

Section 4(b)(1) of the Act, 50 U.S.C. App. §2403(b)(1), provides:

> "To effectuate the policies set forth in section 3 of this Act [section 2402 of this Appendix], the President may prohibit or curtail the exportation from the United States, its territories and possessions, of any articles, materials, or supplies, including technical data or any other information, except under such rules and regulations as he shall prescribe."

The President was given the power to delegate his responsibilities under the statute, 50 U.S.C. App. §2403(e). By Executive Order No. 11533, dated June 4, 1970, the President delegated such responsibility to the Secretary of Commerce, with power of successive delegation. (Section 1 of Executive Order). The former Export Control Review Board was reestablished as the Export Administration Review Board (Section 2). The Secretary was authorized to refer to the Board "such particular export license matters" as he may select (Section 3).

Pursuant to statutory authority, the Secretary promulgated regulations which appear at 15 C.F.R. Part 369 under the caption "Restrictive Trade Practices or Boycotts". §369.1 of the regulations reiterates the statutory declaration of policy "to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries

against other countries friendly to the United States." The regulations then go on to prohibit or enjoin certain acts by:

> ". . . All exporters and related service organizations (including, but not limited to, banks, insurers, freight forwarders, and shipping companies) engaged or involved in the export or negotiations leading towards the export from the United States of commodities, services, or information, . . ." 15 C.F.R. §369.2(a).

Anteo's argument of illegality of contract follows this outline:

(1) The exclusion of Israeli loading ports constitutes a restrictive boycott imposed upon a friendly country. Anteo says that the Court should take judicial notice "that such provisions are inserted in contracts so as to win favor with Arab nations."[4]

(2) The Sidermar Anteo contract of affreightment "involves both exports and imports to the United States."[5]

(3) Therefore the loading port provision contravenes the public policy of the United States as expressed in the Export Regulation Act and the regulations promulgated thereunder.

(4) It follows, Anteo argues, that the entire contract, including the arbitration clause, is illegal and unenforceable. Anteo cites, among other authorities, *Hurd v. Hodge*, 334 U. S. 24 (1947), which refused enforcement of covenants incorporated in conveyances of land and forbidding its rental, lease, sale, transfer or conveyance to any negro. Chief Justice Vinson said for the Court:

> "The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of

> the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents. Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power." 334 U. S. at pp. 34-5.

Antco also relies on Section 296 of the New York Executive Law, amended as of January 1, 1976 to provide:

> "13. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist, or to refuse to buy from, sell to or trade with, any person, because of the race, creed, color, national origin or sex of such person, or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person wilfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:
>
> "(a) Boycotts connected with labor disputes; or
>
> (b) Boycotts to protest unlawful discriminatory practices."

Antco argues that the contract has sufficient contacts with New York (including the provision for arbitration in New York) to render the statute applicable to it; and that the contract is illegal under this statute as well.

Sidermar's Cross-Petition to Compel a Consolidated Arbitration

Sidermar's cross-petition contends, in summary:

(1) The provision in Article 4 excluding Israeli loading ports should not be regarded as a boycott; it may with equal plausibility be regarded as a function of the "safe port" limitation in Article 4, in view of the risk of hostilities in the area.

(2) In any event, the Sidermar/Antco contract does not involve exports from the United States, and the Export Regulation Act, together with its declarations of public policy, have no bearing.

(3) The United States has declared its public policy in favor of the enforceability of agreements to arbitrate in international commerce, that declaration taking the form of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified by the United States as of December 29, 1970, and implemented by Pub. L. 91-368 of July 1, 1970, 9 U.S.C. §§ 201-208.

Sidermar also moves for an order directing a consolidated arbitration including Nepco as Antco's guarantor. Nepco resists that effort on the theory that (assuming legality of the contract) the terms of its guarantee do not require it to arbitrate with Sidermar.

Discussion

As to the first question, the genesis and purpose of the "excluding Israel" phrase in the contract's designation of loading ports, I am not prepared to make a finding on the papers before me. I decline Antco's invitation to judicially notice that Sidermar inserted the phrase to curry favor with the Arab world. A judicially noticed fact "must be one not subject to reasonable dispute," Rule 201(b),

Rules of Evidence for United States Courts; and Sidermar's alternative theory (excluding Israeli ports from the contractual requirement of "safe ports" in view of the political and military tensions of the times) is sufficiently plausible to create a reasonable dispute on the issue. An evidentiary hearing involving the chartering brokers would be necessary to resolve the question.

However, I may assume *arguendo* the truth of Anteo's proposition, since the petition to stay arbitration must fail for another reason.

Assuming that Anteo has correctly described the derivation of the "excluding Israel" phrase, I hold that its presence and effect in this contract do not offend the public policy of the United States as declared in the Export Regulation Act of 1969 and its accompanying regulations. That is because the Sidermar/Anteo contract of affreightment does not involve, in any meaningful sense, United States exporters, or exports from the United States. This is a contract between an Italian shipowner and a Bahamian charterer for the ocean carriage of cargoes from Mediterranean ports to Caribbean or, at Anteo's option, American ports, in which event the contract would give rise to imports, not exports, in respect of the United States. Anteo attempts to endow the contract with a U. S. export flavor by reference to the provision in Article 9 that Sidermar intended to perform the contract "with combined carriers which will load dry cargoes for their own account as back-haul voyage to Mediterranean." But even if I assume that the eastbound dry cargo voyages were from United States ports (there is no evidence on the point before me), they do not bear so close a relationship to the obligations of the parties before the Court[6] as to bring the export statute into play, or to invalidate the contract in consequence. The only purpose of referring to the back-haul trade in the Sidermar/Anteo contract is

to explain why Sidermar might not be able to give Antco "exact scheduling" in respect of loading dates in the Mediterranean.

Antco argues that certain phrases in the statute are so broad that they should be regarded as declaring a public policy entirely independent of the export context. It is true that Section 3(5) of the statute, 50 U.S.C. App. §2402(5), contains phrases that, considered in isolation, would appear to declare a general policy against any "restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States." However, the *implementation* given by statute and regulations alike to the statute's declarations of policy relate solely to control of exports from the United States. I am not disposed to extend the boundaries of that implementation beyond what the Congress and executive branch themselves have done, particularly where the effect of such an extension would be to deprive parties of bargained-for contractual benefits and remedies.

Furthermore, Sidermar is right in saying that the United States favors arbitration clauses in contracts touching upon international commerce. The nation speaks in different tongues and at different times; cases arise where the determination of "public policy" must be a distillation of several governmental utterances.

In the case at bar, Sidermar points to the manifestation of public policy inherent in adherence by the United States to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "Convention"). The Convention was considered by the Supreme Court in *Scherk v. Alberto-Culver Co.*, 417 U. S. 506 (1973), which involved a contract between an American company and a German citizen, and provided for arbitration of disputes in Paris. Alberto-Culver moved to stay arbitration on the ground that Scherk had fraudulently

misrepresented trademark rights concerned in the contract, in violation of the Securities Exchange Act of 1934, so that the arbitration clause was unenforceable under the rule of *Wilko v. Swan*, 346 U. S. 427 (1953).[1] The majority of the Court in *Scherk* distinguished *Wilko* because the contract in *Scherk* "was a truly international agreement." 417 U. S. at p. 515. Therefore it differed from the contract in *Wilko*, where "there was no question but that the laws of the United States generally, and the federal securities laws in particular, would govern disputes arising out of the stock-purchase agreement." 417 U. S. at p. 515. The Court, enforcing the arbitration clause in *Scherk*, stated:

> "A contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is, therefore, an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction. Furthermore, such a provision obviates the danger that a dispute under the agreement might be submitted to a forum hostile to the interests of one of the parties or unfamiliar with the problem area involved.
>
> "A parochial refusal by the courts of one country to enforce an international arbitration agreement would not only frustrate these purposes, but would invite unseemly and mutually destructive jockeying by the parties to secure tactical litigation advantages. . . .
>
> "Whatever recognition the courts of this country might ultimately have granted to the order of the foreign court, the dicey atmosphere of such a legal no-man's-land would surely damage the fabric of international commerce and trade, and imperil the

willingness and ability of businessmen to enter into international commercial agreements." 417 U. S. at p. 516.

While the Court in *Scherk* did not base its decision squarely on the Convention, it drew support from the adherence of the United States to the Convention:

> "Our conclusion today is confirmed by international developments and domestic legislation in the area of commercial arbitration subsequent to the Wilko decision. On June 10, 1958, a special conference of the United Nations Economic and Social Council adopted the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. In 1970 the United States acceded to the treaty, [1970] 3 U.S.T. 2517, T.I.A.S. No. 6997, and Congress passed Chapter 2 of the United States Arbitration Act, 9 U.S.C. §201 *et seq.*, in order to implement the Convention. Section 1 of the new chapter, 9 U.S.C. §201, provides unequivocally that the Convention 'shall be enforced in United States courts in accordance with this chapter.'
>
> "The goal of the Convention, and the principal purpose underlying American adoption and implementation of it, was to encourage the recognition and enforcement of commercial arbitration agreements in international contracts and to unify the standards by which agreements to arbitrate are observed and arbitral awards are enforced in the signatory countries. . . .
>
> "Without reaching the issue of whether the Convention, apart from the considerations expressed in this opinion, would require of its own force that the agreement to arbitrate be enforced in the present case, we think that this country's adoption and

ratification of the Convention and the passage of Chapter 2 of the United States Arbitration Act provide strongly persuasive evidence of congressional policy consistent with the decision we reach today." 417 U. S. at pp. 520-521, n. 15.

In the case at bar, Sidermar directly invokes the Convention, as implemented by Chapter 2 of the United States Arbitration Act, 9 U.S.C. §§ 201-208. I hold that Sidermar's reliance is well founded. The arbitration agreement in the contract between two foreign corporations falls within the Convention. 9 U.S.C. §202.[5] This Court has jurisdiction to entertain Sidermar's cross-petition. 9 U.S.C. §203. Venue is properly laid here, since the arbitration is to take place within the district. 9 U.S.C. §207. The Court has the power to compel arbitration under 9 U.S.C. §206:

> "A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement."

To be sure, Article II(3) of the Convention provides:

> "The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, *unless it finds that the said agreement is null and void*, inoperative or incapable of being performed." (emphasis added)

The phrase "null and void" opens the door to an argument for non-enforcement based on illegality; but I construe the phrase to require a showing by the party resisting enforcement of the agreement that the essence of the obli-

gation or remedy is prohibited by a pertinent statute or other declaration of public policy. That is the typical situation in the cases Antco cites.[9] In *Island Territory of Curacao v. Solitron Devices, Inc.*, 489 F. 2d 1313, 1320 (2d Cir. 1973), *cert. den.*, 416 U. S. 986, the Second Circuit summarized New York law on the point:

> "*In re Kramer & Uchitelle*, 288 N. Y. 467, 43 N. E. 2d 493 (1942), heavily relied upon by appellant for the proposition that, at least as a matter of New York law, a proceeding to enforce an arbitration contract presupposes the existence of a valid and enforceable contract at the time the remedy is sought, has been limited. *In re Exercycle Corp.*, 9 N. Y. 2d 329, 335-336, 174 N. E. 2d 463, 465-466, 214 N. Y. S. 2d 353, 356-358 (1961), to the situation in which public policy as embodied in a statute *forbids the performance which is the subject of dispute*, a policy and statute which are as binding upon the arbitrators as upon the courts." (emphasis added)

No such showing is made in the case at bar. The "performance which is the subject of the dispute" is Antco's obligation to furnish cargoes to Sidermar's vessels at Mediterranean (or, at *Antco's* option, Nigerian) ports. Israeli ports are excluded; but assuming *arguendo* that the exclusion in some manner contravenes public policy as expressed in the Export Regulation Act, it still falls far short of entirely forbidding Antco's performance under the contract.

A narrow construction of the Convention's "public policy" defense is supported by *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de L'Industrie du Papier*, 508 F. 2d 969 (2d Cir. 1974), in which we find a more recent consideration by the Second Circuit of the Convention. In *Parsons* enforcement was sought in this

court of a foreign arbitral award. While the present case involves enforcement of the arbitration agreement rather than enforcement of the award, comparable questions of public policy arise; thus Article V(2)(b) of the Convention allows the court in which enforcement of a foreign arbitral award is sought to refuse enforcement if "enforcement of the award would be contrary to the public policy of [the forum] country." Enforcement of the arbitration award in *Parsons* was resisted on the theory that the public policy of the United States would be offended by enforcement. This court confirmed the award, and the Second Circuit affirmed. After reviewing the purposes and drafting of the Convention, the Second Circuit stated:

> "We conclude, therefore, that the Convention's public policy defense should be construed narrowly. Enforcement of foreign arbitral awards may be denied on this basis only where enforcement would violate the forum state's most basic notions of morality and justice. Cf. 1 Restatement Second of the Conflict of Laws §117, comment c, at 340 (1971); *Loucks v. Standard Oil Co.*, 224 N. Y. 99, 111, 120 N. E. 198 (1918)." 508 F. 2d at p. 974.

This rationale applies with equal force to considerations, within the context of enforcement of the arbitration agreement itself, of whether the contract in question is "null and void" under Article II(3) of the Convention.

Furthermore, in *Parsons* the Second Circuit emphasized that the adherence of the United States to the Convention constitutes, in itself, a significant statement of public policy. The Court stated:

> "To read the public policy defense as a parochial device protective of national political interests would seriously undermine the Convention's utility. This provision was not meant to enshrine the vagaries of international politics under the rubric of 'public

> policy.' Rather, a circumscribed public policy doctrine was contemplated by the Convention's framers and every indication is that the United States, in acceding to the Convention, meant to subscribe to this supranational emphasis. Cf. *Scherk v. Alberto-Culver Co.*, 417 U. S. 506, 94 S. Ct. 2449, 41 L. Ed. 2d 270 (1974)." 508 F. 2d at p. 974.

The contract in *Parsons*, between an American construction company and an Egyptian company, called for the building of a paper mill in Egypt. The project was funded by the United States State Department, through the A.I.D. program. Before completion of construction, the Egyptian government broke off diplomatic relations with the United States, and ordered all Americans out of Egypt. The State Department instructed the American company to cease performance of the contract, in accordance with the provisions of 22 U.S.C. §2370(p), (q), (t), which prohibited the furnishing of assistance to the United Arab Republic subsequent to the cessation of diplomatic relations with that country. The American company complied; the Egyptian company demanded arbitration before the International Chamber of Commerce, as provided for in the agreement; and that tribunal held the American company in breach of contract. Against this background, the American company contended in this court that enforcement of the award would contravene United States public policy. The Second Circuit held that the American company's argument erroneously equated "national" policy with United States "public policy"; and concluded:

> "To deny enforcement of this award largely because of the United States' falling out with Egypt in recent years would mean converting a defense intended to be of narrow scope into a major loophole in the Convention's mechanism for enforcement. We have little hesitation, therefore, in disallowing Overseas' proposed public policy defense." 508 F. 2d at p. 974.

I conclude that, in the circumstances of this case, enforcement of the arbitration agreement in the Sidermar/Antco agreement would not contravene the public policy of the United States.

The foregoing analysis is also sufficient to dispose of Antco's reliance upon Section 296 of the New York Executive Law, quoted *supra*. The applicability of that statute to the contract at bar is not sufficiently demonstrated. In any event, to the extent that this state statute may be regarded as applicable to the Sidermar/Antco contract, its declaration of policy must yield to the public policy of the United States, as expressed in the adherence to the Convention on foreign arbitration agreements and awards.

For the foregoing reasons, Sidermar is entitled to enforcement of the arbitration agreement.

The manner of that enforcement, and the proper parties to the arbitration, remain for consideration.

Initially, Antco argues that it is not required to arbitrate Sidermar's claim for damages resulting from repudiation of the contract. That is because, Antco says, the arbitration clause appears in the Essovoy form attached to the contract; and the contract provides that the provisions of the Essovoy form "are incorporated in this Contract by reference and shall apply to each voyage." Because a claim for total repudiation of contract does not constitute a dispute arising with respect "to each voyage", the argument concludes, Antco has not agreed to arbitrate such a claim.

I find no merit in this contention. Part II of the Essovoy form contains a number of basic commercial, charter party provisions, which are significant in determining the rights and obligations of the parties (deadfreight, laydays, demurrage provisions, safe berth provisions, and the like). The obvious intent of the parties was to render such operating provisions, contained in a

form which originally contemplated a single voyage, applicable to a series of voyages to be performed pursuant to a long-term contract of affreightment. It would distort the contract to limit the arbitration clause to disputes arising out of a single voyage, thereby denying Sidermar its bargained-for procedural remedies in the event of a total repudiation by Antco. The arbitration clause in the attached Essovoy form is cast in broad terms, referring to "any and all differences and disputes of whatsoever nature arising out of this Charter . . ." That arbitration clause is effectively incorporated by the contract's provision that "if arbitration becomes necessary under Clause 24 of Essovoy (1969) such arbitration shall be held in New York, New York." The broad language of the arbitration clause is inconsistent with Antco's effort to exclude from its coverage a claim for damages resulting from wrongful repudiation of contract.

The remaining question is whether Nepco, as guarantor of Antco, is obligated to participate in the arbitration. I hold that it must do so.

The question turns upon the proper construction of the Nepco guarantee, viewed in the light of the Second Circuit's recent decision in *Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A.*, 527 F. 2d 966 (2d Cir. 1975). Just as in the case at bar, the contract in *Nereus* consisted of a maritime contract of affreightment, calling for the transportation of a specified tonnage of petroleum products, over a term of years. Attached to the contract was the same printed Essovoy form which appears in the present case, with an identical arbitration clause. The charterer was a company called Hideca. Hideca's obligations under the contract were guaranteed by a company called Cepsa. The guarantee given by Cepsa provided as follows:

> ". . . [W]e, Compania Espanola de Petroleos, S.A., hereby agree that, should HIDECA default in payment or performance of its obligations under

> the Charter Party, we will perform the balance of the contract and assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party." 527 F 2d at pp. 969-970.

Judge Stewart held for this court that the language of this guarantee was sufficient to incorporate the contract's arbitration clause; and that Cepsa was accordingly obligated to arbitrate, together with Hideca, the claims which the other party to the contract asserted against both of them. The Second Circuit affirmed, stating in part:

> "The guaranty states unequivocally that in the case of Hideca's default, Cepsa is to 'assume the rights and obligations of HIDECA on the same terms and conditions as contained in the Charter Party,' as well as 'perform the balance of the contract.' Although the guaranty does not explicitly restate the specific obligations which Hideca had undertaken and which Cepsa was to assume in the event of Hideca's default, the court found such iteration to be unnecessary in view of the broad language of the guaranty."
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> "Here, under the guaranty, Cepsa agreed both to 'perform the balance of the contract' and to 'assume the rights and obligations of HIDECA.' Thus, the court's holding in Taiwan that 'performance' could not include the obligation to arbitrate does not dictate our disposition here where additional obligations were expressly undertaken. We agree with Judge Stewart that the duty to arbitrate was indeed one of the rights and obligations under the contract which Cepsa, as guarantor, agreed to assume. See *Midland Tar Distilleries, Inc. v. M/T LOTOS*, 362 F. Supp. 1311 (S.D.N.Y. 1973)." 527 F. Supp. at pp. 973-74.

In the last-quoted language, the Second Circuit distinguished *Taiwan Navigation Co. v. Seven Seas Merchants Corp.*, 172 F. Supp. 721 (S.D.N.Y. 1959). In that case, the arbitration clause in the charter party referred only to disputes arising "between Owners and the Charterers"; the guarantee consisted of an additional clause to the charter party, which provided in its entirety:

> "It is understood that Kervin Shipping Corporation will guarantee perform [*sic*] of Seven Seas Merchants Corporation under this Charter Party."

This court in *Taiwan* held that, on this language, the arbitration of disputes was not part of the "performance" of the charter as contemplated by the parties and guaranteed by Kervin.

As noted above, the Second Circuit distinguished *Taiwan* in *Nereus* because in the latter case, the guarantor undertook broader obligations. In construing the scope of the guarantee in *Nereus*, the Second Circuit also said:

> "We are aided in our construction of the language here by prior decisions which make clear that where an arbitration clause is applicable by its own terms to all disputes and is not limited to those arising between the Owner and Charterer, the agreement to arbitrate binds 'not only the original parties, but also all those who subsequently consent to be bound by [the terms of the contract].'" (cases cited) 527 F. 2d at p. 973.

I conclude that the language of the guarantee in the case at bar more closely resembles the guarantee in *Nereus* than the guarantee in *Taiwan*. If there is a substantive difference between the guarantee language in *Nereus*, which was enforced against the guarantor, and the guarantee language in the case at bar, it requires a keener judicial eye than mine to perceive it.

Anteo says that the decisive difference between the guarantee in the case at bar and the guarantee in *Nereus* lies in the omission, from the former guarantee, of the word "assume". As noted above, in the case at bar Nepco guaranteed "to fulfill and perform any and all legal obligations that Anteo may be liable for as Charterers under said Contract of Affreightment." At the argument on the motion, counsel for Anteo/Nepco conceded that if the phrase read "fulfill, perform and assume any and all legal obligations", Nepco would be bound by the arbitration clause. Anteo argues, that in the absence of the word "assume", the guarantee in the case at bar should be read as nothing more than a guarantee of performance, and accordingly insufficient to bind Nepco to the arbitration agreement.

I hold that Anteo's argument asks a single word to assume far too heavy a burden of significance. To be sure, the Second Circuit in *Nereus* referred to the fact that the word "assume" appeared in the guarantee in that case but I do not regard the presence or absence of that particular word as crucial to the decision. Each case must turn upon the fair construction of the language used by the parties in its entirety. The Second Circuit distinguished *Taiwan* because (1) the arbitration clause in that charter was limited to disputes between "Owners and Charterers"; and (2) the guarantee was limited strictly to "performance". In the case at bar (as in *Nereus*), the arbitration clause covers "any and all differences and disputes of whatsoever nature arising out of this charter"; and the parties went to the effort of expanding the guarantee so as to include "any and all legal obligations that Anteo may be liable for as Charterers . . ."

I hold that the language employed in the contract and guarantee in the case at bar is legally indistinguishable from that in *Nereus*; and that Nepco, as guarantor, is obligated to participate in the arbitration.

Opinion of Judge Charles S. Haight, Jr.

The Composition of the Arbitration Panel

In *Nereus*, this court directed that the arbitration proceedings involving the shipowner, charterer and charterer's guarantor be consolidated before a single panel of arbitrators. That direction was affirmed by the Second Circuit, and I direct a similar consolidation in the case at bar.

With regard to the composition of the panel, the Second Circuit directed that the disputes be heard by a five-man panel of arbitrators, one selected by each of the three parties, and the two remaining arbitrators to be appointed by the unanimous action of the three arbitrators appointed by the parties.[10] The Court of Appeals was of the view that "it is important that each party have its own representative", 527 F. 2d at p. 966. The order that I am entering with this opinion provides for the same sort of panel and method of selection, unless the parties agree to a different arrangement. Specifically, Antco and Nepco may see no need for separate representation, and agree to the appointment of a single arbitrator to represent their joint interests. If Antco and Nepco so agree, and Sidermar makes no objection, then a panel of three arbitrators will hear the disputes, at some possible saving in expense and increase in convenience. If the parties fail to so agree, the panel will be selected in accordance with the *Nereus* formula.

Conclusion

For the reasons stated, Antco's petition to stay arbitration is denied; Sidermar's cross-petition to compel a consolidated arbitration with Antco and Nepco is granted; and further proceedings will be governed by the terms of the order which the court is entering with this opinion.

Dated: New York, New York
June 28, 1976

CHARLES S. HAIGHT, JR.
U. S. D. J.

FOOTNOTES

1. The contract quantities were 10 per cent more or less at Sidermar's option, with liftings evenly spread.
2. Sidermar says that some disputes have arisen out of those Part "A" voyages, but does not specify what they are.
3. The reason why Antco ceased performance does not appear from the motion papers. On Antco's view of the case, the reason is irrelevant.
4. Antco's initial brief at p. 6.
5. Antco's reply brief at p. 19.
6. The shippers and charterers on the back-haul voyages are, of course, strangers to this litigation.
7. *Wilko* involved a stock purchase agreement between a customer and a brokerage house, both American. The Court held that where the customer alleged false representations by the brokerage house, he was entitled to sue for damages under the Securities Act of 1933, notwithstanding an arbitration clause in the margin agreement.
8. Under the terms of its adherence, the United States limits application of the Convention to legal relationships "which are considered as commercial under the national law of the United States." The maritime contract of affreightment in suit is "commercial" under that standard. Cf. 9 U.S.C. §1; and see *Island Territory of Curacao v. Solitron Devices, Inc.*, 356 F. Supp. 1, 12-13 (S.D.N.Y. 1973), *aff'd* on other grounds, 489 F. 2d 1313 (2d Cir. 1973), *cert. den.*, 416 U. S. 986.
9. See e. g., *Matter of MetroPlan, Inc., v. Miscione*, 257 App. Div. 652 (1st Dept. 1939) (arbitration agreement not enforceable if underlying chattel mortgage is usorious); *F. A. Straus & Co., Inc., v. Canadian Pac. R. Co.*, 254 N. Y. 407 (1930) (bill of lading clause exempting carrier from all liability for negligence not enforceable because directly contrary to New York public policy).
10. The arbitrator- selection machinery specified in *Nereus* provides that, in the event of a failure to fill any vacancy in the arbitration panel, the appointment will be made by the district court. A comparable provision appears in the order which will be entered in the case at bar.

Order, Dated June 28, 1976.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK:

Anteo Shipping Company, Limited ("Anteo") having petitioned for an order staying a proposed arbitration of disputes arising out of a contract of affreightment dated as of February 13, 1973 between itself and Sidermar S.p.A. ("Sidermar"), and Sidermar having cross-petitioned for an order directing a consolidated arbitration of the said disputes between itself, Anteo and New England Petroleum Corporation ("Nepco"); and affidavits and memoranda having been filed on behalf of the said parties, and oral argument on the petition and cross-petition having been had, and the Court being fully advised in the premises, it is now

ORDERED, that the petition of Anteo for a stay of arbitration be, and the same hereby is, denied; and it is further

ORDERED, that the cross-petition of Sidermar for an order directing a consolidated arbitration between itself, Anteo and Nepco be, and the same hereby is, granted; and it is further

ORDERED, that the arbitration panel who shall hear all claims shall consist of five members; and it is further

ORDERED, that each of the three said parties shall appoint an arbitrator within twenty (20) days of the filing of this Order, and if any party shall fail to nominate its arbitrator within such time, this arbitrator shall be appointed by this Court, upon written application of any other party; and it is further

ORDERED, that the appointment of the two additional arbitrators must be done by the unanimous action of the

three arbitrators already appointed by the parties, or designated by the Court, in accordance with the terms of this Order, and, if such unanimous selection of the two additional arbitrators is not made within ten (10) days after the three original arbitrators have been chosen, then the additional arbitrator or arbitrators shall be selected by this Court, upon written application of any party; and it is further

ORDERED, that, prior to the expiration of the twenty (20) day period specified in this Order for the selection of the three arbitrators by the parties, the parties may, if they are so advised, present to this Court a consent stipulation providing for the appointment of an arbitrator on behalf of Siderm and an arbitrator on behalf of Anteo and Nepco jointly, in which event the arbitration panel shall consist of three arbitrators, with the third arbitrator to be selected by the two arbitrators so chosen or appointed by the Court; and it is further

ORDERED, that if a three-arbitrator panel is not selected in accordance with the preceding paragraph of this Order, then the manner and timing of the selection of the arbitration panel, as provided for in the preceding paragraphs of this Order, shall remain in full force and effect; and it is further

ORDERED, that the arbitration panel, as constituted in accordance with the provisions of this Order, shall proceed to hear and decide all issues and disputes arising out of the said contract between Sidermar, Anteo and Nepco as the guarantor of Anteo; and it is further

ORDERED, that this Court shall retain jurisdiction of this action in order to take such other action or render

such additional relief as may be necessary under the provisions of this Order or the United States Arbitration Act; and it is further

ORDERED, that this case be, and the same hereby is, transferred to the Suspense Docket of this Court pursuant to local Calendar Rule 20(A), subject to reinstatement to the calendar of the undersigned upon proper application of any party.

Dated: New York, New York
June 28, 1976

CHARLES S. HAIGHT JR.
U. S. D. J.

Services of three (3) copies of
the within Joint Appendix is
hereby admitted this 20th day
of September, 1976

Bernhard Hudson Stadel
Attorney for Cross Petitioner, Appellee